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WELCOME TO THE JUNTA: THE EROSION OF CIVILIAN CONTROL OF THE U.S. MILITARY

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Colonel Dunlap argues that civilian control of the United States military is eroding as a result of seemingly disparate phenomena. Colonel Dunlap first examines the American tradition of antimilitarism, which he believes no longer effectively restrains the modern armed forces. He then analyzes the effects of the military's elevated public support, the evolving nature of the leadership elite, and the increasing vulnerability of constitutional safeguards to military influence. In an effort to assess the current predicament, Colonel Dunlap introduces the new paradigm of postmodern militarism that challenges traditional notions of civilian control. Noting the potential long-term implications of excessive military influence, Colonel Dunlap concludes that immediate steps must be taken to revitalize civilian control of the military.

This is not a Latin American junta . . . This is a country where the civilians do call the shots and the armed forces serve at the pleasure of the public. They may not like it but they should go along.¹

Arthur Kropp

Few assumptions about American politics seem more settled than that of civilian control of the military. Professor Allan Millett predicted in a comprehensive study that "civilian control of military policy should be as enduring as it has already proved in two hundred years of na-

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1. John Lancaster, *Clinton and the Military: Is Gay Policy Just the Opening Skirmish?*, WASH. POST, Feb. 1, 1993, at 10 (quoting Arthur Kropp, President of the People for the American Way, a liberal lobbying group).

tionhood."² Similarly, in April 1993 the editors of the redoubtable *Washington Post* assured their readership that the "honorable tradition" of democratic civilian control of the military is not in danger.³

This article takes a less optimistic view.⁴ Civilian control of America's still sizeable military⁵ is instead eroding, albeit slowly and often inconspicuously. The erosion of civilian control does not imply that a malevolent conspiracy exists within the armed services. Instead, the decline in civilian control is a subtle drift towards an uncertain destination. The decline indirectly results from a combination of seemingly disparate trends, programs, and circumstances. Further, the erosion very often receives the unwitting aid of well-meaning civilian leaders and military personnel with the best of intentions.

The accomplices in the decline of civilian control are the American people themselves. Rather than resisting military intrusion into civilian affairs, Americans turn to the armed forces ever more frequently to provide answers when conventional political methodologies fail. This article contends that the trend threatens the nation's long-term interests.

This article initially studies the parameters of an American model for civilian control of the military. It then argues that antimilitarism—the cornerstone of the American political tradition of civilian supremacy—has so declined that it no longer serves as an impetus for civilian control. The historical overview also demonstrates that the Vietnam War, perhaps the apex of antimilitarism in modern America, paradoxically served as the catalyst for the military's dramatic rise in status.

The military's elevated standing, combined with other circumstances of the contemporary political landscape, invites an unprecedented insinuation of the military into American life. The evolving nature of the leadership elite and the increasing vulnerability of key constitutional safeguards against military influence facilitate the insinuation. This article introduces a new paradigm—postmodern militarism—that presents a unique challenge to the concept of civilian control. Finally, this article offers suggestions to reinvigorate civilian control while accommodating America's security needs in the last decade of the twentieth century.

2. ALLAN R. MILLETT, *THE AMERICAN POLITICAL SYSTEM AND CIVILIAN CONTROL OF THE MILITARY* 61 (1979).

3. *The Commander in Chief*, WASH. POST, Nat'l Wkly. Ed., Apr. 12-18, 1993, at 27.

4. A small but growing number of commentators are expressing similar concerns. See, e.g., A.J. Bacevich, *Clinton's Military Problem—And Ours*, NAT'L REV., Dec. 13, 1993, at 36; Richard H. Kohn, *Out of Control: The Crisis in Civil-Military Relations*, NAT'L INTEREST, Spring 1994, at 3; Russell F. Weigley, *The American Military and the Principle of Civilian Control from McClellan to Powell*, 57 J. MIL. HIST., Oct. 1993, at 27. The author has previously touched on the issue of the vitality of civilian control of the military. See Charles J. Dunlap, Jr., *The Origins of the American Military Coup of 2012*, PARAMETERS, Winter 1992-93, at 2.

5. The *Tampa Tribune* reported: "Since reaching a post-Vietnam peak of 2.17 million in 1987, the number of people in uniform has dropped 21 percent to 1.71 million. That figure is projected to bottom out at 1.4 million in 1999." Steve Huettel, *In Retreat*, TAMPA TRIB., Nov. 28, 1993, at 1, 14.

I. WHAT IS CIVILIAN CONTROL?

In his treatise, *The Soldier and the State*,⁶ Professor Samuel P. Huntington complained that despite many references to civilian control of the military in historical literature, a satisfactory definition of the term had yet to emerge.⁷ In an attempt to remedy the deficiency, Huntington defined "civilian control" by describing the mode of achieving it. The accepted formula in Western nations like the United States was, according to Huntington, "subjective" civilian control.⁸ Subjective civilian control involved "maximizing the power of civilian groups in relation to the military" with particular civilian institutions, constitutional forms, and social class distinctions.⁹ Unfortunately, due to its focus on process, Huntington's approach did not readily serve as an analytical tool.

Professors Kenneth W. Kemp and Charles Hudlin took a more orthodox approach to defining civilian control.¹⁰ They described the principle as being composed of two related parts: "First, the ends of government policy are to be set by civilians; the military is limited to decisions about means Second, it is for the civilian leadership to decide where the line between ends and means (and hence between civilian and military responsibility) is to be drawn."¹¹ However, the definition fails to acknowledge the dangers that arise when elected officials freely set policy that allows the uniformed services to encroach upon areas that ought to be administered by non-military agencies. The definition also inadequately addresses the situation in which "the line between ends and means" is drawn to assign to the military matters that democracies should not allot to their most powerful and authoritarian arm.

Consequently, it is necessary to add a third interrelated element to Kemp and Hudlin's definition. In no event should the military, to paraphrase President Eisenhower,¹² be allowed to acquire *unwarranted* influence, whether sought or unsought, in civilian affairs. Defined as such, the

6. SAMUEL P. HUNTINGTON, *THE SOLDIER AND THE STATE* (1957); cf. Edward M. Coffman, *The Long Shadow of The Soldier and The State*, 55 J. MIL. HIST., June 1991, at 69.

7. HUNTINGTON, *supra* note 6, at 80.

8. *Id.*

9. *Id.*

10. Kenneth W. Kemp & Charles Hudlin, *Civil Supremacy Over the Military: Its Nature and Limits*, ARMED FORCES & Soc'y, Fall 1992, at 7.

11. *Id.* at 8-9.

12. In his 1961 Farewell Address, President Eisenhower admonished:

In the councils of government we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals so that security and liberty may prosper together.

ENCYCLOPEDIA BRITANNICA, INC., 18 ANNALS OF AMERICA 3 (1976).

principle of civilian control may be offended when the influence of the armed forces extends into areas that endanger liberties or the democratic process, *even when that expansion is sanctioned by the civilian leadership*. The revised definition addresses what Millett identified as the purpose of civilian control: "to ensure that defense policy and the agencies of defense policy are subordinated to other national traditions, values, customs, governmental policies, and economic and social institutions."¹³ The additional factor exalts democratic principles over the authoritarian values that are inherent in the military.¹⁴

II. THE TRADITION OF AMERICAN ANTIMILITARISM

Observers of American society frequently cite its traditional antimilitarism as the main pillar supporting civilian control of the armed forces.¹⁵ Americans, the argument goes, are so wary of the military that any suggestion of unseemly involvement in civilian affairs would be identified quickly and rooted out.¹⁶ Today, however, that argument is obsolete because the antimilitarism that would stimulate such vigilance no longer

13. MILLETT, *supra* note 2, at 2. Millett also listed certain prerequisites that he believed are needed for civilian control to remain predominant in the policy process:

- a. the armed forces do not dominate government or impose their unique (however functional) values upon civilian institutions and organizations.
- b. the armed forces have no independent access to resources of military [utility].
- c. the armed forces' policies on retirement, pay, education, training, treatment, promotion, and use of personnel are not inconsistent with basic civil liberties and individual rights—with some compromises for military discipline and combat effectiveness.
- d. the use of military force is not determined by the values of the military institution itself, either for or against military action, either in the conduct of foreign or domestic policies. Conversely, civilian decisions on the use of force should not disregard the relationship of policy ends and military institutional characteristics in terms of personnel, doctrine, training, equipment, and morale.

Id.

14. For a discussion of the instinctively authoritarian values of the military, see *infra* notes 353-60 and accompanying text.

15. Military analyst Harry Summers observed: "Americans have a long and proud history of antimilitarism, and civilian control of the military is one of the foundations of American democracy." Harry Summers, *History, Clinton, and LBJ*, WASH. TIMES, Oct. 21, 1993, at 16. Another commentator, exploring the apolitical tradition of the United States military, attributed civilian control of the military to an antimilitaristic view of a standing army:

There is no express provision in the Constitution for the political neutrality of the military. The principle is best viewed as a corollary for another constitutional principle, that of civilian control over the military. The mandate of civilian control of the military pervades our constitutional structure and stems from the deep distrust on the part of the Founding Fathers of a standing army. Such a distrust was based on European and American experiences of great power wielded by a permanent armed force.

J. Bryan Echols, *Open Houses Revisited: An Alternative Approach*, 129 MIL. L. REV. 185, 200 (1990).

16. Geoffrey Perret insisted that the "antimilitaristic side of the American character is forever on guard." GEOFFREY PERRET, *A COUNTRY MADE BY WAR* 560 (Vintage Books 1990) (1989).

exists.

To understand the tradition of antimilitarism, it is necessary to examine its history. Antimilitarism arose in colonial America for two primary reasons: first, the belief that professional soldiers were the agents of oppression and, second, the loathsome reputation of the soldiers themselves.¹⁷

A. *The Soldier as an Instrument of Tyranny*

Colonial Americans inherited the European view that permanent military forces were costly instruments of tyranny.¹⁸ Their experience with the British regulars who suppressed growing American dissatisfaction with English rule corroborated that conviction.¹⁹ Answerable only to the King and his designated governors, the troops were unresponsive to the colonists' assemblies.²⁰ Incidents like the Boston Massacre only aggravated American hostility toward professional soldiers.²¹

Thus, civilian control of professional militaries became a critical issue in colonial America. In writing the Declaration of Independence, the colonists charged King George III with keeping standing armies among them without the consent of their legislatures, and having "affected to render the Military independent of and superior to the Civil Power."²² When Americans later debated which interests the Constitution would address, the danger posed by a permanent military establishment was a preeminent concern. The *New York Journal* of 1788 published a typical view of standing armies:

The liberties of a people are in danger from a large standing army, not only because the rulers may employ them for the purposes of supporting themselves in any usurpations of power, which they may see proper to exercise, but there is great hazard, that an army will subvert the forms of the government, under whose authority they are raised, and establish one, according to the pleasure of their leaders.²³

The caution of the early Americans is understandable. In *The Man on Horseback*,²⁴ the classic study of military subversion of civilian rule,

17. See generally RICHARD H. KOHN, *EAGLE AND SWORD: THE BEGINNINGS OF THE MILITARY ESTABLISHMENT IN AMERICA, 1783-1802*, at 3-9 (1975).

18. See generally William S. Fields & David T. Hardy, *The Militia and the Constitution: A Legal History*, 136 MIL. L. REV. 1, 6-7 (1992) (discussing the evolution of the British militia).

19. *Id.* at 23-26.

20. MILLETT, *supra* note 2, at 4-6.

21. See David E. Engdahl, *Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders*, 57 IOWA L. REV. 1, 24-28 (1971).

22. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

23. "Brutus" X, *That Dangerous Engine of Despotism, A Standing Army*, N.Y.J., Jan. 24, 1788, reprinted in LIBRARY OF AMERICA, *THE DEBATE ON THE CONSTITUTION: PART TWO* 86 (1993). The concerns about a military takeover can be traced to the takeover following the English Civil War. See Fields & Hardy, *supra* note 18, at 11.

24. SAMUEL E. FINER, *THE MAN ON HORSEBACK* (1988). Finer considered the United States military "strictly subordinated to the civilians." *Id.* at 3.

Samuel Finer argued that given the military's "marked superiority in organization, [its] highly emotionalized symbolic status, and [its] monopoly of arms . . . [t]he wonder . . . is not why [it] rebels against its civilian masters, but why it ever obeys them."²⁵ Nevertheless, despite the fears of early Americans, serious military challenges to civilian authority are rare in United States history.

The "Newburgh Conspiracy" is one of the exceptions. Occurring at the close of the Revolutionary War, it constituted, according to historian Richard H. Kohn, the "closest an American army has ever come to revolt or coup d'état."²⁶ Originating in the discontent of unpaid troops encamped near Newburgh, New York, and fostered by nationalists who saw the revolt as an opportunity to increase the taxing ability (and hence the power) of the central government, the nascent conspiracy collapsed after General George Washington delivered a speech to condemn it.²⁷

The most renowned recent challenge to civilian authority came from one of America's most famous military leaders, General Douglas MacArthur.²⁸ Frustrated with President Harry Truman's reluctance to allow American forces to attack air and naval bases in China during the Korean War, MacArthur attempted to circumvent the President's policies. Truman, who feared that attacks against the Chinese mainland could lead to a wider conflict—one possibly including a nuclear confrontation with the Soviet Union—relieved MacArthur of his command after the general openly criticized the President.²⁹ MacArthur returned to the United States to a hero's welcome, addressed a joint session of Congress, made an abortive bid for the presidency, and then "faded away."³⁰ Truman biographer David McCullough declared that the Truman-MacArthur controversy "challenged [civilian control] as never before in the nation's history."³¹ Significantly, however, as noted by Professor D. Clayton James, there is no evidence that MacArthur ever "harbored dreams of gaining political power by force or other unconstitutional means."³²

25. *Id.* at 5.

26. KOHN, *supra* note 17, at 17.

27. *Id.* at 32. For the text of General Washington's speech, see WILLIAM SAFIRE, *LEND ME YOUR EARS: GREAT SPEECHES IN HISTORY* 91-94 (1993); see also Richard H. Kohn, *American Generals of the Revolution: Subordination and Restraint*, in *RECONSIDERATION OF THE REVOLUTIONARY WAR: SELECTED ESSAYS* 104-23 (Don Higgenbotham ed., 1978) [hereinafter Kohn, *Introduction*]. Kohn credited the first group of American generals, not Washington alone, for establishing the legacy of subordination and restraint of the military. *Id.* at 123.

28. See generally R. EARNEST DUPUY & TREVOR N. DUPUY, *THE ENCYCLOPEDIA OF MILITARY HISTORY* 1247-48 (2d rev. ed. 1977); Roy K. Flint, *The Truman-MacArthur Conflict: Dilemmas of Civil Military Relations in the Nuclear Age*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 223-67 (Richard H. Kohn ed., 1991); David McCullough, *Truman Fires MacArthur*, *MIL. HIST. Q.*, Autumn 1992, at 8.

29. DAVID MCCULLOUGH, *TRUMAN* (1992).

30. The reference to "fade away" is taken from the conclusion of MacArthur's April 19, 1951 speech to a joint session of Congress wherein he said, referring to himself, that "old soldiers never die; they just fade away." See SAFIRE, *supra* note 27, at 379.

31. McCullough, *supra* note 28, at 21.

32. See D. Clayton James, *Harry S. Truman*, in *COMMANDERS IN CHIEF* 107, 120 (Jo-

Few other events in American history challenged civilian control of the military. Most can be described as either long-ago³³ or nearly forgotten,³⁴ grossly speculative,³⁵ or obviously preposterous.³⁶ In any event, the military never has made an *overt* attempt to seize power.

B. *The Soldier as a Societal Outcast*

The second source of traditional American antimilitarism is rooted in a revulsion for those who served as career soldiers in the late eighteenth century. At that time, soldiering—especially in the enlisted ranks—was an appalling experience.³⁷ To steel soldiers for the tightly packed formations that marched terrifyingly close to their opponents to achieve effective musket fire, officers resorted to relentless drill and brutal discipline.³⁸

Few sought such ghastly employment. The Comte de Guibert wrote in 1772 that the profession of soldiering had been abandoned “to the most vile and miserable class of citizen.”³⁹ Similarly, General Sir John Hackett observed that during the eighteenth century “[t]he common soldier [held] . . . a position in society which was almost that of an outcast.”⁴⁰ Early Americans brought this disparaging view of soldiering with

seph G. Dawson, III ed., 1993). James believed MacArthur “did not present a threat to civil-military relations in the United States.” *Id.*

33. See, e.g., Jonathan Lurie, *Andrew Jackson, Martial Law, Civilian Control of the Military, and American Politics: An Intriguing Amalgam*, 126 *MIL. L. REV.* 133 (1989) (discussing President Andrew Jackson’s militaristic usurpation of judicial authority); see also Harold M. Hyman, *Ulysses Grant I, Emperor of America?: Some Civil-Military Continuities and Strains of the Civil War and Reconstruction*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 175 (Richard H. Kohn ed., 1991); Weigley, *supra* note 4 (discussing McClellan/Lincoln relationship in context of civilian control of the military); cf. *Greer v. Spock*, 424 U.S. 828, 842 (1976) (Burger, J., concurring) (“It is only a little more than a century ago that some officers of the Armed Forces, then in combat, sought to exercise undue influence either for President Lincoln or for his opponent, General McClellan, in the election of 1864.”).

34. One nearly forgotten incident that may receive renewed attention in the military debate over roles and missions is known as the “Revolt of the Admirals.” The 1949 controversy was a “flare-up of the feud between the advocates of land-based airpower and those of sea-based airpower” and constituted “a flagrant peacetime challenge hurled by top-ranking military men at the civilian leadership of the military.” Keith D. McFarland, *The 1949 Revolt of the Admirals*, in *THE PARAMETERS OF WAR* 149, 149 (Lloyd Matthews & Dale E. Brown eds., 1987).

35. See, e.g., LEN COLODNY & ROBERT GETTLIN, *SILENT COUP: THE REMOVAL OF A PRESIDENT* (1991) (arguing that President’s Nixon’s downfall was engineered by the military).

36. One of the most preposterous is the allegation that the Kennedy assassination was a coup d’état engineered by the Pentagon. See *The Conspiracy Theories*, *NEWSWEEK*, Nov. 22, 1993, at 99.

37. See generally JOHN KEEGAN & RICHARD HOLMES, *SOLDIERS: A HISTORY OF MEN IN BATTLE* 66-67 (1986).

38. KOHN, *supra* note 17, at 2.

39. GENERAL SIR JOHN HACKETT, *THE PROFESSION OF ARMS* 83 (1983) (quoting 1 *ESSAI GÉNÉ DE TACTIQUE, OUVRES MILITAIRES* 13 (1803)).

40. *Id.* Hackett commented:

The quality of the private soldier has rarely been lower than in the armies of mid-eighteenth-century Europe. In the contemporary European outlook there

them to the New World. Soldiers deployed to America in service of the British King, and the Continental Army whose composition mirrored its European counterpart,⁴¹ confirmed the unfavorable perceptions of professional militaries.

III. ANTIMILITARISM AND THE AMERICAN CONCEPT OF NATIONAL DEFENSE

Antimilitarism spurred much of the thinking about the organization of the new nation's defenses.⁴² In fact, the Supreme Court noted in *Perpich v. Department of Defense*⁴³ that the Constitutional Convention was infused with a "widespread fear that a national standing Army posed an intolerable threat to individual liberty and the sovereignty of the separate states."⁴⁴ Virtually forswearing involvement in overseas conflicts,⁴⁵ the Founding Fathers considered foreign invasion and attacks by native Americans along the frontier as the principal threats to American security.⁴⁶ A modest navy and a small standing army⁴⁷ backed by a citizen militia⁴⁸ was deemed sufficient to counter these threats. While the final version of the Constitution accommodated both a standing army⁴⁹ and a militia,⁵⁰ the document reflected a prevailing view favoring dependence on the militia.⁵¹

was no heroic view of war as an ennobling experience. No especial esteem attached to a warrior class. . . . No one enlisted unless he was nearly at the end of his tether.

Id.

41. See Kohn, *supra* note 27, at 107. Kohn related: "[B]eginning in 1777 the Continental army began to mirror its European relative in social composition: The soldiery was a mixed lot of convicted Tories, criminals, British deserters, bounty jumpers, draftees, and drafted substitutes—an army overwhelmingly of the young, of the poor, of rootless laborers and tradesmen." *Id.*

42. For a general discussion of the national security debate and the formation of the Constitution, see Richard H. Kohn, *The Constitution and National Security: The Intent of the Framers*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 61-94 (Richard H. Kohn ed., 1991); Engdahl, *supra* note 21, at 35-42.

43. 496 U.S. 334 (1990).

44. *Id.* at 340 n.5.

45. 3 *ENCYCLOPEDIA BRITANNICA*, INC., *supra* note 12, at 520 (reporting George Washington's Proclamation of Neutrality).

46. See Fields & Hardy, *supra* note 18, at 32.

47. George Washington in his Farewell Address of September 19, 1796, counseled: "[O]vergrown military establishments . . . under any form of government are inauspicious to liberty and . . . are to be regarded as particularly hostile to republican liberty." 1 *ENCYCLOPEDIA BRITANNICA*, INC., *supra* note 12, at 609.

48. See MILLETT, *supra* note 2, at 8-9 (noting that by law service secretaries could not be active officers of the armed services, thereby ensuring civilian control); T.A. Heppheimer, *Build-Down*, *AM. HERITAGE*, Dec. 1993, at 34, 34-36.

49. U.S. CONST. art. I, § 8, cl. 12.

50. U.S. CONST. art. I, § 8, cls. 15, 16.

51. See generally Richard H. Kohn, *Introduction*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 5 (Richard M. Kohn ed., 1991) (commenting that the militia system was inserted in the Constitution as a primary defense institution due to violent prejudice against standing armies); Fields & Hardy, *supra* note 18, at 33-38 (discussing debate over type of military establishment to be provided in

Until relatively recently the system worked as conceived by the Framers. Enormous military forces raised for the Civil War and two World Wars largely demobilized at the end of hostilities.⁵² After World War II, however, advances in technology and the development of extensive transnational economic and political ties obliged the United States to maintain a massive, *permanent* peacetime military establishment.⁵³ Although antimilitarism yielded to Cold War realities by necessity, Americans did not completely abandon their traditional vigilance. Alerted by President Eisenhower's warning about the growth of the military-industrial complex,⁵⁴ skepticism of the military establishment persisted well into the Cold War.⁵⁵ The skepticism deepened during the Cold War's most famous prodigy: the Vietnam War.

A. *The Impact of the Vietnam War*

It is difficult to overstate the impact of Vietnam on the United States military and the issue of civilian control. Among other things, the conflict inspired a resurgence of antimilitarism in American society. Equally important, the war tremendously affected the attitudes and decisions of today's military leaders. For many Vietnam veterans the war was the watershed event of their personal and professional lives and continues to shape their views.⁵⁶ Above all else, the veterans molded by Vietnam are determined to avoid repeating the mistakes of the war.⁵⁷

Characterizing the United States' involvement in Vietnam, Lt. Gen. Phillip B. Davidson observed, "Our principle vulnerability was the weakness inherent in democracy itself—the incapacity to sustain a long, unfocused, inconclusive, and bloody war far from home, for unidentified or ill-defined national objectives."⁵⁸ Most analysts agree that a meddlesome

Constitution).

52. See Heppeneimer, *supra* note 48.

53. Former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe noted: It was not until after World War Two that the change began, chiefly as a consequence of America's global conflict with the Soviet Union. Containing the Soviets required large standing forces and began consuming an eye-opening share of the federal budget . . . A massive infrastructure of military bases was established throughout the country, deeply affecting local economies and politics.

ADMIRAL WILLIAM J. CROWE, JR. & DAVID CHANOFF, *THE LINE OF FIRE* 23-24 (1993); *see also* DAVID R. SEGAL, *RECRUITING FOR UNCLE SAM: CITIZENSHIP AND MILITARY MANPOWER POLICY* 2-6 (1989) (commenting on the changing structure of the military after World War II).

54. For the text of President Eisenhower's admonishment, *see supra* note 12.

55. In his treatise, Millett argued that "[i]f anything, the proliferating agents of civilian control has more than kept pace with the size of the standing forces, the hugeness of the military budget, and the importance of national security affairs." MILLETT, *supra* note 2, at 38. For an early 1960's critique of the military establishment, *see* JOHN M. SWOMLEY, JR., *THE MILITARY ESTABLISHMENT* (1964).

56. *See generally* AL SANTOLI, *LEADING THE WAY: HOW VIETNAM VETERANS REBUILT THE U.S. MILITARY: AN ORAL HISTORY* (1993).

57. *See id.*

58. PHILLIP B. DAVIDSON, *VIETNAM AT WAR—THE HISTORY: 1946-1975*, at 797-98 (1988).

executive branch,⁵⁹ paired with a politically paralyzed Congress,⁶⁰ also hindered the war effort. Moreover, many in uniform believe that a hostile, almost treasonous press fought them at every turn.⁶¹ Most troubling for the veterans of Vietnam, it seemed that even the American people had abandoned them. With soldiers facing open hostility in the streets, American antimilitarism reached its modern zenith.⁶²

Not all of the military's problems were externally generated. Outmoded strategy,⁶³ a disintegration of discipline,⁶⁴ and the rise of rampant careerism⁶⁵ crippled effectiveness. In the years following Vietnam, virtually every aspect of the war was dissected, analyzed, and studied by the military.⁶⁶ Studies included an examination of the role of civilian institutions, often the very ones expected to exercise civilian control of the armed forces.⁶⁷

Despite the deluge of analysis performed in the wake of Vietnam,

59. Former Senator Barry Goldwater offered a harsh assessment of President Lyndon Johnson's wartime leadership: "[He] didn't know his rear end from a hot rock about running a war." Dotson Rader, *"This Country Had to Make a Decided Change,"* PARADE MAG., Nov. 28, 1993, at 4, 5. Moreover, the civilian leadership did not limit itself to its proper role as the policymaker. Instead, it repeatedly dabbled in purely military matters despite no apparent qualifications to do so. For example, Lieutenant General Davidson noted that during the Rolling Thunder air campaign against North Vietnam:

Johnson, McNamara, and their civilian underlings not only established the philosophy of the program, they decided what targets should be hit, the number of planes to be used, and on occasion, even the type and weight of bombs to be employed. To see Johnson and McNamara huddled over maps and aerial photographs planning air strikes would have been ludicrous, had the consequences not been so serious. As a result of the restrictions and the interference of the "self-appointed air marshals" (Westmoreland's words), ROLLING THUNDER's initial efforts were futile.

DAVIDSON, *supra* note 58, at 341. Likewise, General Bruce Palmer, Jr., reported that Johnson acted as "the target officer" for air strikes for most of his presidency. BRUCE PALMER, JR., *THE 25-YEAR WAR: AMERICA'S MILITARY ROLE IN VIETNAM* 37 (1984).

60. See HARRY G. SUMMERS, *ON STRATEGY: A CRITICAL ANALYSIS OF THE VIETNAM WAR* 21-32 (1982) [hereinafter SUMMERS, *VIETNAM WAR*].

61. For a discussion of the press' coverage of military action, see *infra* part VI.D.

62. According to Morris Janowitz, the 1960-70 period produced "the most violent antimilitarism in modern United States history." MORRIS JANOWITZ, *THE PROFESSIONAL SOLDIER: A SOCIAL AND POLITICAL PORTRAIT* 1 (2d ed. 1971).

63. See David Hackworth, *The War Without End*, NEWSWEEK, Nov. 22, 1993, at 44-48. Colonel David Hackworth, a decorated officer, argued that the "U.S. military fought an unconventional war with conventional tactics." *Id.* at 45.

64. See GUENTER LEWY, *AMERICA IN VIETNAM* 153-61 (1978).

65. *E.g.*, John J. Douglass, *The Nineteenth Annual Kenneth J. Hodson Lecture: Military Lawyer Ethics*, 129 MIL. L. REV. 11, 17 (1990).

66. Ike Skelton, *Joint and Combined Operations in the Post-Cold War Era*, MIL. REV., Sept. 1993, at 2, 11 ("The bitter experience of Vietnam . . . sent American military men back to the study of war and military history."). The careful study produced results. "More than any other institution in the federal government, the Pentagon studied its failures, learned from them and reformed." E.J. Dionne, Jr., *Martial Metaphors: Gulf Victory Alters Political Rhetoric by Giving Rise to All-Purpose Language*, WASH. POST, Mar. 27, 1991, at A21 (quoting White House planner James P. Pinkerton).

67. See Skelton, *supra* note 66, at 7-10.

only the debacle of Desert One⁶⁸ and the massive budgetary increases of the Reagan years⁶⁹ offered the military both the impetus and the resources to effect genuine change. Congress also attempted to revitalize the military by enacting the multifaceted Goldwater-Nichols Department of Defense Reorganization Act of 1986⁷⁰ that became the foundation of the congressional effort.⁷¹ The changes stimulated a dazzling transformation.

68. See PAUL B. RYAN, *THE IRANIAN RESCUE MISSION 8-9* (1985). "Desert One" refers to the abortive attempt to rescue American hostages who were seized by Iranian militants on November 4, 1979. The rescue attempt ended in catastrophe on April 24, 1980, when U.S. aircraft collided at a staging area in Iran designated Desert One. *Id.* at 1. Eight American military personnel died in the effort. *Id.* The hostages were eventually released on January 20, 1981. *Id.* at 105. See generally CHARLIE A. BECKWITH & DONALD KNOX, *DELTA FORCE* (1983) (providing a first-hand account of the rescue mission); DANIEL P. BOLGER, *AMERICANS AT WAR* 99-168 (1988).

69. Jacques S. Gansler described the Reagan build-up:

At the end of the 1970s, the United States was spending approximately \$150 billion a year on its defense establishment. The public felt that this did not provide a "strong America," and gave Ronald Reagan a mandate for significant increases in the defense budget. Within six years the defense budget had almost doubled and an extra trillion dollars had been spent on increasing America's military power.

JACQUES S. GANSLER, *AFFORDING DEFENSE* 1 (1989).

70. Pub. L. No. 99-433, 100 Stat. 992 (1986) (codified as amended in scattered sections of 10 U.S.C.).

71. Some observers consider the Goldwater-Nichols Act as the "third wave" of reform since the National Security Act of 1947. See Christopher A. Yuknis, *The Goldwater-Nichols Reorganization Act of 1986: An Interim Assessment*, in *ESSAYS ON STRATEGY X*, at 75, 77-83 (Mary A. Sommerville ed., 1993). Interestingly, one of the stated purposes of the Goldwater-Nichols Act is to "strengthen civilian authority" within the Department of Defense. Section 3 of Goldwater-Nichols provides:

SEC. 3 POLICY

In enacting this Act, it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401)-

- (1) to reorganize the Department of Defense and *strengthen civilian authority* in the Department;
- (2) to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense;
- (3) to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands;
- (4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to their commands;
- (5) to increase attention to the formulation of strategy and to contingency planning;
- (6) to provide for more efficient use of defense resources;
- (7) to improve joint officer management policies; and
- (8) otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense.

Goldwater-Nichols Department of Defense Reorganization Act, § 3, 100 Stat. at 993-94 (emphasis added).

In 1988 *U.S. News & World Report* related: "In contrast to the dispirited, drug-ravaged, do your-own-thing armed services of the '70s and early '80s, the U.S. military has been transformed into a fighting force of gun-ho attitude, spit-shined discipline, and ten-hut morale."⁷²

Positive results on the battlefields soon followed. Qualified successes in Grenada,⁷³ Libya,⁷⁴ and Panama⁷⁵ set the stage for the spectacular Gulf War triumph. Televised images of stupefied Iraqi soldiers grovelling before their American captors enthralled America. Such pictures ended more than two decades of what Rick Atkinson described as "self-reproach, mistrust, and an abiding doubt in U.S. military prowess."⁷⁶ Atkinson declared that following the Gulf War, the "competency and efficacy of the American military was now beyond question."⁷⁷ Perhaps even more important, the military's superlative performance "reaffirmed the bond between those in uniform and the larger republic."⁷⁸ Antimilitarism all but disappeared.⁷⁹

B. *Today's Military*

The United States military of the 1990's bears little resemblance to the forces that spawned antimilitarism in colonial America. The virtual absence of any record of overt military intervention into civil affairs has cast the Founding Fathers' fear of a military takeover as a mere oddity of an earlier era.⁸⁰ The American political psyche no longer entertains any conscious apprehension of the military as a tool of political oppression.⁸¹ Thus, a principal basis for the traditional antimilitarism that historically assured civilian control of the military is extinct.

The current American complacency about military control is likely attributable to an inadequate understanding of the many forms that mili-

72. Michael Satchell et. al., *The Military's New Stars*, U.S. NEWS & WORLD REP., Apr. 18, 1988, at 33.

73. See BOLGER, *supra* note 68, at 261-358.

74. See generally CROWE & CHANOFF, *supra* note 53, at 129-45 (characterizing the attack on Libya as eminently successful).

75. See generally CLARENCE E. BRIGGS III, OPERATION JUST CAUSE: PANAMA DECEMBER 1989: A SOLDIER'S EYEWITNESS ACCOUNT (1990).

76. RICK ATKINSON, CRUSADE: THE UNTOLD STORY OF THE PERSIAN GULF 493 (1993).

77. *Id.*

78. *Id.* at 495.

79. See HARRY SUMMERS, ON STRATEGY II: A CRITICAL ANALYSIS OF THE GULF WAR 13-19 (1992).

80. See Kohn, *supra* note 27, at 105 (commenting on dissipation of Americans' fear of military takeover).

81. One example of the American tradition is related by columnist Art Buchwald: I was at the White House that night to hear [President Nixon's] resignation speech, and what impressed me more than anything else was that while one leader of our country was resigning and another was taking his place, I did not see one tank or one helmeted soldier in the street and the only uniforms I saw that night were two motorcycle policeman who were directing traffic on Pennsylvania Avenue.

JAY M. SHAFRITZ, WORDS ON WAR 58 (1990) (quoting Art Buchwald).

tary subversion of civilian control can take. Popular notions of military intervention tend to focus on overt military takeovers. Overt intervention is, however, not the only threat to civilian authority in the United States—or even the principal one. For example, Finer contended that military intervention in politics in developed countries seldom involves the actual overthrow of a government.⁸² Typically, more subtle and manipulative threats exist, with a level of intervention ranging from influence to blackmail.⁸³

As Americans no longer view the armed forces as an instrument of tyranny, they no longer abhor the persona of the soldiers. The reason is simple: Instead of drawing from the dregs of society, today's military picks from among the nation's finest. With ninety-four percent of military recruits possessing high school diplomas,⁸⁴ enlisted personnel are better educated than the general populace. Virtually all officers have graduated from college, and most senior officers hold post-graduate degrees.⁸⁵ Additionally, studies show that top military officers are frequently more intelligent than their civilian counterparts.⁸⁶ Demonstrating the military's organizational excellence and societal respect, military leadership techniques⁸⁷ are now the envy of business and government.⁸⁸ Moreover, unlike

82. Finer explained:

At first glance the characteristic "mode" of military intervention is the violent overturn of a government and the characteristic "level" is the establishment of overt military rule. Yet often, the military works on governments from behind the scenes; and even when they do establish a military dictatorship, they usually fabricate some quasi-civilian facade of government behind which they retire as fast as possible. Overt military rule is relatively rare, and, apparently, short-lived.

FINER, *supra* note 24, at 4.

83. *Id.* at 77-80. Finer also enumerated several modes of intervention:

- (1) The normal constitutional channels.
- (2) Collusion and/or competition with the civilian authorities.
- (3) The intimidation of the civilian authorities.
- (4) Threats of non-cooperation with, or violence towards, the civilian authorities.
- (5) Failure to defend the civilian authorities from violence.
- (6) The exercise of violence against the civilian authorities.

Id. at 127.

84. Until recently, the rate was even higher. See *Military Recruits Decline in Quality*, WASH. TIMES, May 26, 1993, at 5.

85. For example, one survey revealed that over 88% of brigadier generals had an advanced degree, compared with 19% of top civilian business leaders. See David Gergen, *America's New Heroes*, U.S. NEWS & WORLD REP., Feb. 11, 1991, at 76.

86. A survey of 163 new Army brigadier generals revealed that their IQs were in the 92nd percentile of the population. See Bruce W. Nelan, *Revolution in Defense*, TIME, Mar. 18, 1991, at 25.

87. Technological changes in the latter half of the twentieth century caused political scientist Harold D. Lasswell to project "that 'specialists in violence'—that is, military elites—would add management to their repertoire of skills and would become a major force in ruling elites." SEGAL, *supra* note 53, at 4.

88. For instance, in the best seller, *A Passion for Excellence*, management gurus Tom Peters and Nancy Austin invited industry to emulate the innovative techniques of Air Force leaders. See generally TOM PETERS & NANCY AUSTIN, *A PASSION FOR EXCELLENCE* (1985). Similarly, Vice President Al Gore, in his capacity as head of the National Performance Re-

the rest of America, the highly disciplined post-Vietnam military is relatively drug- and crime-free.⁸⁹ It earns kudos as an enlightened avenue for social advancement by African-Americans and other minorities.⁹⁰ The plethora of initiatives resulting from the Tailhook scandal⁹¹ also suggests that the military may emerge as the model for the proper treatment of women in the workplace.

C. *The Military's Growing Popularity*

The American public no longer views the armed forces with the fear and loathing that produced the antimilitarism that provided the intellectual infrastructure for civilian control of the military in this country. In 1993 the steadily climbing approval rating for the military reached a twenty-seven-year high.⁹² A Harris poll spokesman reported that "[n]o other major institution, profession, or interest group comes close [to the military]."⁹³ The remarkable resiliency of the military's popularity also is notable; it remains evidently unfazed by the women-in-combat debate,⁹⁴ the Tailhook scandal,⁹⁵ and the gays-in-the-military controversy.⁹⁶

IV. THE NEW POLITICAL ENVIRONMENT

A. *Do Americans Believe Democracy Is Failing?*

In a free society the most important poll of public opinion is taken on election day. Casting a vote is the ultimate expression of democracy and fundamentally indicates the public's commitment to the democratic system. The strength of the commitment carries striking implications for

view, insisted that "military commands can teach civilian government much about efficiency, morale and clear objectives." Michael Ruby, *Rube Goldberg, R.I.P.*, U.S. NEWS & WORLD REP., Aug. 16, 1993, at 64 (quoting Vice-President Al Gore); see also *Al Gore: What Business Can Teach the Feds*, BUS. WK., Sept. 13, 1993, at 102.

89. See, e.g., Tracy Gwinn, *Parachutists Want to Share Highs with Kids*, PLAIN DEALER (Cleveland), Sept. 12, 1993, at 8B.

90. See generally Charles Moskos, *From Citizens' Army to Social Laboratory*, WILSON Q., Winter 1993, at 83, 87-90.

91. Tailhook refers to the alleged sexual abuse of women by Navy and Marine Corps aviators at the Tailhook Association convention in Las Vegas, Nevada, in September 1991. The Tailhook Association draws its name from the arresting device used to stop planes landing on aircraft carriers. For a discussion of the allegations and their repercussions, see generally J. Richard Chema, *Arresting "Tailhook": The Prosecution of Sexual Harassment in the Military*, 140 MIL. L. REV. 1 (1993).

92. *Public Confident About Military*, SOLDIERS, June 1993, at 5 (reporting results from Harris poll).

93. John T. Correll, *Opinions*, AIR FORCE, June 1993, at 26.

94. See Bruce W. Nelan, *Annie Get Your Gun*, TIME, May 10, 1993, at 38.

95. For a brief discussion of the Tailhook scandal, see *supra* note 91.

96. For a discussion of the gays-in-the-military debate, see *U.S. Decides Not to Appeal Gay Ruling*, WASH. POST, Dec. 30, 1993, at 4. For a discussion of the legal aspects of the gays-in-the-military debate, see David Schlueter, *Gays and Lesbians in the Military: A Rationally Based Solution to a Legal Rubik's Cube*, 29 WAKE FOREST L. REV. 393 (1994); Spiro P. Fotopoulos, Note, *The Beginning of the End for the Military's Traditional Policy on Homosexuals: Steffan v. Aspin*, 29 WAKE FOREST L. REV. 611 (1994).

civilian control of the military. In 1964 one analyst maintained that a coup d'état in the United States is "too fantastic to contemplate" because, among other things, "the bulk of the people are strongly attached to the prevailing political system The environment most hospitable to coups d'état is one in which political apathy prevails as the dominant style."⁹⁷

American commitment to the democratic political system is weakening, insofar as voter participation accurately measures the commitment. For the past three decades voter participation generally has declined, though the trend was interrupted temporarily in 1992 by the interest generated by billionaire Ross Perot's bid for the presidency.⁹⁸ The weakening attachment to the political system evoked a warning from *Business Week*: "When people become divorced from the political system, demagogues thrive, extremism flourishes."⁹⁹

Whatever threat to civilian control political apathy might pose, it is dwarfed by the potential peril of outright hostility to elected government. Increasing animosity to democratic government is based on a growing consensus that elected politicians are failing to alleviate the economic and physical insecurity of vast numbers of Americans.¹⁰⁰ Various described as the "Age of Insecurity"¹⁰¹ and the "Age of Anxiety,"¹⁰² Americans live in an era permeated by a dread of unemployment. They believe, economist Robert J. Samuelson has argued, that "something fundamental has 'gone wrong' with the economy."¹⁰³ Senator Bill Bradley aptly summed up the crisis: "There are millions of Americans who find economic security an unattainable dream."¹⁰⁴

Superimposed over the deep-seated economic worries is an even greater fear of crime. The explosion of random violence terrifies Americans.¹⁰⁵ "Crime," according to Senate Judiciary Chairman Joseph Biden, "is the single most pressing issue on the minds of the American peo-

97. ANDREW C. JANOS, *THE SEIZURE OF POWER: A STUDY OF FORCE AND POPULAR CONSENT* 39 (1964) (Research Monograph No. 16, Center of International Studies, Princeton University).

98. Voter turnout hit a 64-year low in 1988 (50.17%), capping a downward trend that began in 1960. See *THE UNIVERSAL ALMANAC* 1992, at 89 (1991). With less than 27% of the eligible electorate actually voting for the current Commander-in-Chief (43% of a 54% turnout), the 1992 election failed to represent a renaissance of democratic majoritarianism.

99. *Deflating Uncle Sam's Bureaucratic Bloat*, *BUS. WK.*, Sept. 13, 1993, at 110 [hereinafter *Deflating Bureaucratic Bloat*].

100. See Robert J. Samuelson, *The Great American Fantasy*, *WASH. POST*, Nat'l Wkly. Ed., Nov. 1-7, 1993, at 18.

101. *Jobs in the Age of Insecurity*, *TIME*, Nov. 22, 1993, at 32.

102. See Frank Swoboda, *A Safety Net for a Nervous Work Force*, *WASH. POST*, Nat'l Wkly. Ed., Oct. 25-31, 1993, at 18.

103. Samuelson, *supra* note 100, at 18. Professor Samuelson believed that the pessimism is misplaced in that economic fluctuations are part of economic growth and should be considered as nothing more than passing aberrations.

104. Swoboda, *supra* note 102, at 18 (quoting Senator Bill Bradley (D-NJ)).

105. See, e.g., Ted Gest, *Violence and Its Terrifying Randomness*, *U.S. NEWS & WORLD REP.*, Dec. 20, 1993, at 6.

ple."¹⁰⁶ Poll after poll has demonstrated that frightened citizens will support expensive, sometimes draconian responses to lawlessness.¹⁰⁷ For example, a 1990 poll revealed a majority of Americans who believed that the Bill of Rights is a luxury no longer affordable.¹⁰⁸ With sixty-one percent of Americans convinced that crime in their community is increasing,¹⁰⁹ it is no surprise that they turn their homes and public places into fortresses.¹¹⁰ Sacrificed is the social interaction which underpins democracy.¹¹¹

In a complete reversal of the colonial era, Americans find the democratically elected political leaders, *not* the "standing army," corrupt and repugnant. A September 1993 *Business Week* editorial concluded:

It's clear most Americans don't trust their government much. They don't trust it to deliver services, solve social problems, or boost their fortunes efficiently. Just the opposite. Government appears to work against them as much as for them these days. Beneath the surface of the tax revolt and the movement for term limits is the public's sense of abandonment, abuse, and betrayal by government.¹¹²

The American public's approval of the performance of their elected leaders has reached historic lows.¹¹³ The trend has serious implications. *U.S. News & World Report* echoed the warnings of others: "Government that does not deliver value inevitably breaks the social compact with the people, and that can be dangerous."¹¹⁴ The one branch of government that *does* deliver, however, is the "can do" military. One commentator has observed that "[a]t a time when a growing number of Americans are disillusioned with government . . . the military stands in singular counterpoint to that disillusionment."¹¹⁵

106. *Senate Approves \$22-billion Crime Bill*, TAMPA TIMES, Nov. 20, 1993, at 1A (quoting Senator Joseph Biden (D-DE)).

107. *E.g.*, Sam Vincent Meddis & Robert Davis, *Poll: Get Tougher on Crime*, USA TODAY, Oct. 28, 1993, at 1.

108. *See* Arthur J. Goldberg, *Can We Afford the Bill of Rights?*, 129 MIL. L. REV. 1 (1990).

109. Jill Smolowe, *Danger in the Safety Zone*, TIME, Aug. 23, 1993, at 29.

110. TIME reported: "Fear [of crime] has led to a boom in the security industry and the transformation of homes and public places into fortresses." *Id.*

111. *See generally* Robert Gerloff, *Public Space Minus the Public*, UTNE READER, Jan./Feb. 1993, at 46.

112. *Deflating Bureaucratic Bloat*, *supra* note 99.

113. In a 1993 Gallup poll only 8% of Americans expressed a "great deal" of confidence in Congress. In the same poll, only 19% expressed that level of confidence in the President, but 32% expressed such confidence in the military. *See* David W. Moore & Frank Newport, *Confidence in Institutions: Military Still Tops The List*, GALLUP POLL MONTHLY, Apr. 1993, at 22, 23.

114. Ruby, *supra* note 88, at 64; *see also* Robert J. Bresler, *Politics of Dissatisfaction*, USA TODAY MAG., Nov. 1993, at 5.

115. Steven V. Roberts & Bruce Auster, *Colin Powell, Superstar*, U.S. NEWS & WORLD REP., Sept. 20, 1993, at 48, 49.

B. *The Military as Deliverer*

The transfer of public confidence from the elected leaders to the military challenges civilian control of the armed forces. Specifically, *Finer* argued that, as confidence in politicians and the civil process weakens, an intervening military is deemed a "deliverer."¹¹⁶ That appears to be the case today. *James Fallows* captured the sentiment of many Americans when, after contrasting the military's efficiency with the failures of civilian government, he declared, "I am beginning to think that the only way the national government can do anything worthwhile is to invent a security threat and turn the job over to the military."¹¹⁷

Granting the military the responsibility for the general national welfare under the aegis of "national security" is a major expansion of its customary function. National security ordinarily includes "only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare."¹¹⁸ In that context, the military's primary security responsibility is "to fight or be ready to fight wars should the occasion arise."¹¹⁹

Even with the historical separation of military functions from domestic issues, political leaders have long recognized the motivating effect of martial rhetoric.¹²⁰ Despite the bellicose language and the allocation of tremendous resources, a range of economic and social problems stubbornly defy civilian solution. In response, exasperated politicians have re-

116. *Finer* stated:

[A] decline of confidence in the politicians and civil processes is liable to enhance the popularity of the military. By the same token, it weakens the authority of the civilian regime and renders it an easier prey to the intervention of the [military], which, in these circumstances, comes to be regarded as a deliverer.

FINER, *supra* note 24, at 73.

117. *James Fallows*, *Military Efficiency*, *ATLANTIC MONTHLY*, Aug. 1991, at 18. He explained his reasoning:

According to our economic and political theories, most agencies of the government have no special standing to speak about the general national welfare. Each represents a certain constituency; the interest groups fight it out. The military, strangely, is the one government institution that has been assigned legitimacy to act on its notion of the collective good. "National defense" can make us do things—train engineers, build highways—that long-term good of the nation or common sense cannot.

Id.

118. *Cole v. Young*, 351 U.S. 536, 544 (1955).

119. *Toth v. Quarles*, 350 U.S. 11, 17 (1955).

120. For example, President Johnson had his "War on Poverty." *Guy Gugliotta*, *War on Poverty*, *WASH. POST*, Dec. 26, 1993, at A1. President Carter termed his drive for energy self-sufficiency "the moral equivalent of war," *Tilak Doshi*, *Twenty Years After the First Oil Shock*, *BUS. TIMES*, Oct. 30, 1993, at 1, and President Reagan declared a "War on Drugs." *John Dillin*, *U.S. Drug Fight: The Focus Shifts to Home Front*, *CHRISTIAN SCI. MONITOR*, May 3, 1993, at 3. President Bush era advocates of educational reform equated the desperate status to which schools have been allowed to decline as "an act of war" *Henrik Bering-Jensen*, *Rebel for Cause of School Reform*, *WASH. TIMES*, July 11, 1991, at E1.

placed militant oratory with the actual dispatch of military troops to fight civic wars.

V. THE NEW ROLES

Beginning in the 1980's, Congress significantly enlarged the scope of the armed services' domestic duties.¹²¹ Such assignments are not completely new. In the early days of the Republic, military personnel served as explorers, built roads and bridges, and gave the nation its cadre of trained engineers.¹²² Further, the military countered civil disturbances at various times,¹²³ and engaged in law enforcement duties in the South during Reconstruction.¹²⁴ Law enforcement responsibilities were, however, largely abandoned following the passage of the Posse Comitatus Act in 1878.¹²⁵ For the next century the military successfully avoided assuming regular police duties.¹²⁶

The one-hundred-year hiatus ended with the drug crisis of the 1980's. Discouraged by the inability of police departments to stop illegal drugs from flooding the country, Congress enacted the Military Support for Civilian Law Enforcement Agencies Act in 1981.¹²⁷ Originally intended merely to strengthen interdiction efforts, the military's responsibility evolved into a \$1.2 billion program¹²⁸ that includes regular patrols

121. For a discussion of the recent expansion of the military's domestic duties as a response to the drug problem, see *infra* notes 127-33 and accompanying text.

122. Samuel P. Huntington, *New Contingencies, Old Roles*, JOINT FORCE Q., Autumn 1993, at 38, 39; see also William Rosenau, *Nontraditional Missions and the Future of the U.S. Military*, FLETCHER F. WORLD AFF., 31, 39-45 Winter/Spring 1994.

123. See generally Engdahl, *supra* note 21 (discussing the use of the military to suppress domestic disorders).

124. See Engdahl, *supra* note 21, at 55-64 (discussing the use of the military as law enforcement after the Civil War).

125. The Posse Comitatus Act provides:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

18 U.S.C. § 1385 (1988) (original version at ch. 263, § 15, 20 Stat. 145, 152 (1878)).

126. For background to the Posse Comitatus Act, see *United States v. Hartley*, 486 F. Supp. 1348, 1356 n. 11 (M.D. Fla. 1980); Engdahl, *supra* note 21, at 62-65. Though technically applying only to the Army and the Air Force, by regulation the Act also governs the Navy. See H.R. REP. NO. 71, 97th Cong., 1st Sess. (1981), reprinted in 1981 U.S.C.A.N. 1785, 1787.

127. Congress enacted a series of laws in the 1980's delineating military cooperation with civilian law enforcement authorities which are found in Title 10, U.S.C., Chapter 18. See Department of Defense Authorization Act, Pub. L. No. 97-86, § 905(a)(1), 95 Stat. 1099, 1115 (1981), amended by National Defense Authorization Act, Pub. L. No. 100-456, § 1104(a), 102 Stat. 1918, 2043 (1988); National Defense Authorization Act for Fiscal Year 1990 and 1991, Pub. L. No. 101-189, § 1216(a), Nov. 29, 1989, 103 Stat. 1352, 1569 (codified at 10 U.S.C. § 371-380 (1988)); see also DEPARTMENT OF DEFENSE, DIRECTIVE 5525.5. DoD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS (1986).

128. DEPARTMENT OF DEFENSE, DEFENSE ALMANAC 93, at 18 (1993) [hereinafter DEPARTMENT OF DEFENSE, DEFENSE ALMANAC].

in certain high-crime neighborhoods¹²⁹ and along borders.¹³⁰ Desperate politicians want to deploy even more troops to police their cities.¹³¹

With more than 5,000 troops conducting law enforcement activities throughout the country on any given day,¹³² America is witnessing the beginning of what it never has had before:¹³³ a *national* uniformed police agency. This is a fundamental departure from United States law enforcement philosophy and one of import to civilian control. Professor Steven Wisotsky explained the problems created by a national police force:

The constitution makes the president commander-in-chief, thus centralizing control of all the armed forces in one person. Police, by contrast, are supposed to enforce the law, primarily against domestic threats at the city, county, and state levels. They thus are subject to local control by the tens of thousands of communities throughout the nation.¹³⁴

Morris Janowitz has argued that the professional military resisted identifying itself with local police forces because of, among other factors, the impact on civilian control. "Civilian supremacy in the United States," Janowitz noted, "has rested on the assumption that its national military forces were organized and controlled separately from the local and more decentralized police forces."¹³⁵

Of perhaps greater concern, Congress did not limit the expansion of military responsibilities in the civilian sector to policing. The National Defense Authorization Act for 1993 included legislation allowing the armed forces to engage in a wide range of activities once the exclusive

129. The *Washington Times* reported that since 1989 District of Columbia National Guardsmen operated floodlights in known drug markets, conducted surveillance flights over the city, boarded up drug houses, and performed administrative functions in support of the D.C. police. *The National Guard as Political Football*, WASH. TIMES, Oct. 27, 1993, at 20. Another non-emergency use of military troops in a policing role occurred in December 1992 during a four-day crackdown on crime in public housing complexes in Sumter, S.C. See William Matthews, *How Guard Helped Cut Local Crime*, AIR FORCE TIMES, Nov. 8, 1993, at 4.

130. See, e.g., Glenn F. Bunting, *Plan for National Guard at Border Gains Support*, L.A. TIMES, Oct. 19, 1993, at A3.

131. The mayor of the District of Columbia asked President Clinton to order National Guard troops to patrol high crime Washington neighborhoods even though the city already has the highest police-to-citizen ratio in the country. *Fever Line*, U.S. NEWS & WORLD REP., Nov. 8, 1993, at 23. A similar proposal was made by a Los Angeles councilman. See John Leo, *The New Highwaymen*, U.S. NEWS & WORLD REP., Sept. 27, 1993, at 18.

132. *New Civilian Tasks for the Military* (Ctr. for Def. Info. broadcast, Apr. 11, 1993).

133. To be sure, the military has intervened to quell domestic disorders but it has long resisted, especially in the twentieth century, any suggestion of a permanent police function in part because of a fear that to do so would "fan the flames of antimilitarism." See Jerry M. Cooper, *Federal Military Intervention in Domestic Disorders*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 120, 142-43 (Richard H. Kohn ed., 1991).

134. Steven Wisotsky, *The War on Drugs and Civil Liberties*, USA TODAY MAG., July 1993, at 17, 19.

135. JANOWITZ, *supra* note 62, at 419.

province of local civilian authorities.¹³⁶ Specifically, the Civil-Military Cooperative Action Program¹³⁷ encouraged the use of the "skills, capabilities, and resources of the armed forces to assist civilian efforts to meet the needs of the United States."¹³⁸ The military now involves itself in local schools,¹³⁹ the provision of medical care to underserved communities,¹⁴⁰ infrastructure construction and repair projects,¹⁴¹ environmental restoration,¹⁴² youth programs,¹⁴³ and more. It also has played a much more aggressive role in disaster relief activities,¹⁴⁴ especially following Hurricanes Hugo and Andrew, after which thousands of active duty soldiers supplanted the role of civilian agencies.¹⁴⁵

The new domestic operations are enormously popular with the public. Americans apparently no longer entertain what the Supreme Court declared in 1972 was "a traditional and strong resistance to any military intrusion in civilian affairs."¹⁴⁶ To the contrary, beleaguered residents of drug-plagued neighborhoods welcome soldiers into the community.¹⁴⁷ Af-

136. National Defense Authorization Act for Fiscal Year 1983, Pub. L. No. 102-484, 106 Stat. 2315 (codified as amended in scattered sections of 10 U.S.C. §§ 113-2825 (1988)).

137. *Id.* § 1081(b), 106 Stat. at 2514 (codified at 10 U.S.C. § 401 (1988)).

138. *Id.*

139. For example, since October 1992 an Army program served 20,000 students in thirteen states. Darlene Smith, *Army Expands Science, Math Student Program*, ARMY TIMES, Oct. 11, 1993, at 28. Due to a 1992 congressional authorization to expand the existing program, the number of Junior Reserve Officer Training Corps programs is expected to double, reaching over 318,000 students over the age of fourteen. See Eugene J. Carroll, Jr., *Junior R.O.T.C.? Who Needs It?*, N.Y. TIMES, June 26, 1993, at 10.

140. Department of Defense, *President Clinton Directs Release of \$57.5 Million to National Guard for Urban and Rural Youth Pilot Programs* (News Release No. 271-93, June 11, 1993).

141. See, e.g., Vago Muradian, *Meet the Playground Squadron*, AIR FORCE TIMES, Nov. 29, 1993, at 22.

142. See Miles Harvey, *Eco-Warriors: Can the Military Be Our First Line of Environmental Defense?*, UTNE READER, Jan./Feb. 1993, at 17.

143. Television journalist Jim Cummins reported a \$44 million, five-month, military-run "boot camp" program for high school dropouts that provided an opportunity to earn a high school diploma while developing self-discipline and cooperation. *NBC Nightly News* (NBC television broadcast, Nov. 9, 1993).

144. The military is authorized to furnish domestic disaster assistance by the Stafford Act, 42 U.S.C. §§ 5121-5202 (1988), and the Federal Civil Defense Act of 1950, 50 U.S.C. App. §§ 2251-2303 (1988). See also DEPARTMENT OF DEFENSE, DIRECTIVE 3025.1: MILITARY SUPPORT OF CIVIL AUTHORITIES (1993); DEPARTMENT OF DEF., DIRECTIVE 3025.12: EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES (1971).

145. See GOVERNMENT ACCOUNTING OFFICE, DISASTER ASSISTANCE: DoD's SUPPORT FOR HURRICANES ANDREW AND INIKI AND TYPHOON OMAR 15 (1993). The GAO reported that "DoD provided much of the food, water, sheltering, transportation, and medical care, even though the Federal Response Plan assigns those responsibilities to other agencies." *Id.*

146. *Laird v. Tatum*, 408 U.S. 1, 17 (1972) (involving a suit by the subjects of Army surveillance during the 1960's as a part of an Army attempt to collect information on persons who might have caused domestic civil disturbances). For a discussion of *Laird* in context, see Paul M. Peterson, *Civilian Demonstrations Near the Military Installation: Restraints on Military Surveillance and Other Activities*, 140 MIL. L. REV. 113, 120-21 (1993).

147. See *A Cry From the Capital*, CHRISTIAN SCI. MONITOR, Oct. 25, 1993, at 18. The

ter civilian relief organizations failed, disaster victims hailed the arrival of the military, demonstrating once again that the antimilitarism of the Vietnam era is gone.¹⁴⁸

Although a few officials grumble that given the Department of Defense's new domestic agenda, it should be renamed the "Department of Defense, Health, Education and Welfare,"¹⁴⁹ an increasing number of military leaders greet the new functions with enthusiasm. Some see the new roles as a way to preserve military force structure in the austere budgetary environment of the post-Cold War era.¹⁵⁰ Others view the new assignments as a proper use of military strength. For example, one senior leader, Admiral Paul David Miller, Commander-in-Chief of United States Atlantic Command, envisions military personnel employed in a wide variety of domestic construction and infrastructure repair projects, as well as a myriad of social service programs.¹⁵¹

A. *Impact of the New Roles on Civilian Control*

How does the increasing military involvement in nontraditional missions undermine civilian control of the military? Why are such activities more threatening today than in the past? The answers are manifold.

First, before the Cold War, the peacetime militaries performing domestic assignments were small and relatively weak compared to the rest of American society. Despite the end of the Cold War, today's military is the largest peacetime force in United States history that does not face an overarching *external* threat.¹⁵² The impact of the unprecedented concentration of martial energy on American society and its potentially vulnerable political systems is uncertain at best.

Second, as noted above, the military's role in domestic activities has become more formalized and legitimized.¹⁵³ Unlike earlier eras, specific

Christian Science Monitor reported that the proposal to use troops in a police mode in Washington "is very popular" in the neighborhoods affected. *Id.*

148. Harry Crumpacker, *A Military Overhaul*, TAMPA TRIB.-TIMES, Nov. 14, 1993, at 6. He observed:

As has been pointed out by others, one solid indication of how far the armed forces have come [since Vietnam] is the reaction of American citizens faced with recent natural disasters. No one who watched the Airborne arrive in Homestead [following Hurricane Andrew] could doubt for a second that those citizens wanted soldiers on the scene as fast as possible. So did the Midwest flood victims.

Id.

149. *Washington Wire*, WALL ST. J., Dec. 3, 1993, at 1.

150. See, e.g., Capt. J.F. Kelly, USN (Ret.), *U.S. Needs Military to Fight "Wars" at Home*, NAVY TIMES, Aug. 16, 1993, at 37.

151. PAUL D. MILLER, BOTH SWORDS AND PLOWSHARES 38 (1992) (unpublished Inst. for Foreign Pol'y Analysis, Nat'l Security Paper No. 10).

152. Admiral Crowe, whose 45-year career ended in 1989 observed that his professional life spanned an "era when American foreign and military policy was shaped by a single factor: the challenge of the Soviet Union." CROWE & CHANOFF, *supra* note 53, at 320.

153. For a discussion of the expanded domestic role of the military, see *supra* notes 121-51 and accompanying text.

legislation now facilitates military involvement in domestic areas.¹⁵⁴ The legislation finds official expression in military mission statements and doctrinal manuals.¹⁵⁵

Third, the coalescing of the all-volunteer military has challenged civilian control. Not only is the military undiluted by the civilianizing effect of conscription, it is also—after Goldwater-Nichols—a much more unified force. Specifically, the law attempted to minimize the deleterious effect of interservice rivalries¹⁵⁶ by emphasizing “jointness,” that is, forcing the separate military services to operate corporately. According to former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe, the “overarching aim of jointness is to expand officers’ loyalties from a single service to the military as a whole.”¹⁵⁷

When the “joint” imperative of Goldwater-Nichols combines with fiscally driven consolidations, gigantic military conglomerates of disturbing potential arise.¹⁵⁸ For example, though virtually unreported in the media, the United States recently formed a supercommand: U.S. Atlantic Command (USACOM). In the early fall of 1993 over 1.2 million troops—nearly all the military forces based in the continental United States—were reorganized under the control of USACOM, a joint military organization answerable to a single uniformed officer.¹⁵⁹ USACOM not only is America’s largest military command; it also is the organization primarily responsible for the new array of domestic assignments. For example, USACOM responds to civil disorders.¹⁶⁰ Thus, a military leader whose control over the United States military is second only to the president must study and plan operations to take control of American cities in crises. In short, the military force that concerns itself with domestic affairs is larger, more focused, and more united than ever before.

The fourth factor that differentiates the current military involvement from that of earlier eras is the increased politicization of today’s armed services. Clearly, an apolitical military complements and sustains civilian control. Chief Justice Burger opined in *Greer v. Spock*¹⁶¹ that the “200-year tradition of keeping the military separate from political affairs . . . is a constitutional corollary to the express provision for civilian control of

154. For a discussion of particular legislation, see *supra* notes 127 and 136 and accompanying text.

155. For example, “combatting drugs” is now officially a “high national defense mission” of the U.S. armed forces. DEPARTMENT OF DEFENSE, NATIONAL MILITARY STRATEGY OF THE UNITED STATES 15 (1992). Similarly, the new Field Manual 100-5, the Army’s basic doctrine treatise, contains for the first time a chapter on nontraditional missions. DEPARTMENT OF ARMY, FM100-5 OPERATIONS 13-0 to 13-8 (1993).

156. For a discussion of interservice rivalries, see JANOWITZ, *supra* note 62, at 350-56.

157. CROWE & CHANOFF, *supra* note 53, at 148.

158. Congress historically opposed “excessive unification” of the armed forces specifically because it feared an overconcentration of military power would weaken civilian control. See JANOWITZ, *supra* note 62, at 356.

159. See William Matthews, *New Command Replaces LANTCOM*, ARMY TIMES, Oct. 11, 1993, at 11.

160. *Id.*

161. 424 U.S. 828 (1976).

the military."¹⁶² In the United States, law and policy are supposed to ensure political neutrality.¹⁶³ Nevertheless, as the United States military adapts to the needs of the country in a time of budget constraints and few external threats, the traditional apolitical stance has diminished.

The current politicization of the military is another vestige of the Vietnam War. One theory partially attributes the defeat in Vietnam to the failure of the military leadership to assert themselves and their views more forcefully in the political realm.¹⁶⁴ Profoundly affected by that experience,¹⁶⁵ military officers developed the skills and determination to effectively express themselves in such fora. Thus, military leaders eroded the customary practice of privately expressing disagreement with civilian leaders, if at all. Forrest Pogue, the biographer of General George C. Marshall, explained the traditional thinking:

[Marshall] believed that military men had a duty to explain the needs of their services and the requirements of their forces to carry out assignments directed by the President. A responsible officer had the right to question a policy he considered wrong or mistaken and to discuss thoroughly a proposal. *But there was no right to challenge publicly the wishes of the Commander-in-Chief.*¹⁶⁶

To many in the military, the lesson of Vietnam holds that a discreet approach to confronting political authority is outmoded. Admiral Crowe observed that few officers today achieve higher rank "without a firm grasp of international relations, congressional politics, and public affairs."¹⁶⁷ Accordingly, today's officers are intellectually prepared to challenge political leaders, particularly when they believe military interests are at

162. *Id.* at 842 (Burger, J., concurring). For a further discussion of the Constitution and the apolitical tradition of the military, see *supra* note 15.

163. Military officers may not hold civil office. 10 U.S.C. § 973(b)(2) (1988). There is a limited exception allowing officers to hold a nonpartisan civil office on a school board located on a military reservation. *Id.* § 973(c) (Supp. IV 1992). Enlisted personnel may hold specified nonpartisan elected offices. DEPARTMENT OF DEFENSE, DIRECTIVE 1344.10 (1990); see also DEPARTMENT OF DEFENSE, JOINT ETHICS REGULATION (1993). However, 1993 legislation relaxed the restrictions imposed on the political activities of three million federal civilian workers, of whom Department of Defense employees constitute the largest group. See Hatch Act Reform Amendments of 1993, Pub. L. No. 103-94, 107 Stat. 1001 (1993). They may now take an active part in partisan political campaigns, hold office in political parties, and solicit contributions under certain circumstances. *Id.* Though an attempt by Senator John McCain to apply the liberalized provisions to the military was defeated, it remains indisputable that the military will be operating in a much more politicized environment than ever before. See *Politics and the Military*, AIR FORCE TIMES, Aug. 9, 1993, at 26.

164. See, e.g., PALMER, *supra* note 59, at 45-46, 201-02.

165. Morris Janowitz argued that the "frustrations" of limited warfare further exposed career officers to the interrelationship of political and military factors. JANOWITZ, *supra* note 62, at 436.

166. Forrest C. Pogue, *George C. Marshall on Civil-Military Relationships*, in *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789-1989*, at 194 (Richard H. Kohn ed., 1991) (emphasis added); see also CROWE & CHANOFF, *supra* note 53, at 342.

167. CROWE & CHANOFF, *supra* note 53, at 23. See also *supra* note 263 and accompanying text.

risk.¹⁶⁸ Moreover, the new military assertiveness especially politicizes the relationship with the weakened civilian political institutions.¹⁶⁹

In addition to the military response to Vietnam, protest groups ironically prompted politicization as well. During the Vietnam conflict, public demonstrations and similar activities wrongly targeted the military itself. Military analyst Harry Summers explained: "By attacking the *executors* of Vietnam policy rather than the *makers* of that policy, the protestors were striking at the very heart of our democratic system—civilian control of the military."¹⁷⁰ By challenging the military itself, the critics induced public responses from the armed forces. The protestors thus legitimized military expression on partisan issues.

The politicization of the military that followed the Vietnam War continues today. For example, opponents of the military's homosexual exclusion policy have challenged military recruiters and education programs on many university campuses.¹⁷¹ Thrust into the political debate by these and other actions directed at the uniformed ranks, the armed services have defended themselves publicly.¹⁷² The public defense led to open clashes with civilian leaders when the Clinton Administration sought to change the policy. The public disputes inescapably politicize the participants, including the military.¹⁷³

Another, even more disturbing development in the politicization of the military is illustrated by the circumstances surrounding the selection of General Colin Powell's successor as Chairman of the Joint Chiefs of Staff. Gay rights organizations reportedly undermined the candidacy of General Joseph P. Hoar of the Marine Corps.¹⁷⁴ Although General Hoar was not involved in any wrongdoing, he enforced the homosexual exclusion policy during a tour as commander of the Marine Corps Recruit De-

168. It is one thing to debate the merits of the conduct of an overseas military operation, and quite another to argue about the propriety of a strategy to combat a domestic ill. Nevertheless, once the "mission" is redefined to equate the solving of domestic problems with the conduct of war, such debates are inevitable. For example, if the armed forces are tasked to improve education, the military inevitably will find itself critiquing the role of the teachers and the content of curriculum, both of which are political matters best reserved to the voters and their elected leaders.

169. Professor Huntington explained:

"The extent to which military institutions and individuals become politicized is a function of the weakness of civilian political organizations and the inability of civilian political leaders to deal with the principal policy problems facing the country." SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 221 (1968).

170. SUMMERS, *VIETNAM WAR*, *supra* note 60, at 28.

171. See, e.g., Tom Philip, *CSUS May End ROTC Over Anti-Gay Policy*, SACRAMENTO BEE, Feb. 15, 1992, at 1. For a discussion regarding the legality of bans on military recruiters, see *United States v. City of Philadelphia*, 798 F.2d 81 (3d Cir. 1986).

172. See MELISSA WELLS-PETRY, *EXCLUSION: HOMOSEXUALS AND THE RIGHT TO SERVE* (1993). Wells-Petry, a major in the Army Judge Advocate General's Corps, presented numerous arguments against permitting gays to serve in the military. See *id.*

173. See Otto Kreisher, *Congressional Critics Stall Clinton's 'Don't Ask, Don't Tell' Policy*, SAN DIEGO UNION-TRIB., Feb. 4, 1994, at A8.

174. See generally David Martin, *Landing the Eagle*, VANITY FAIR, Nov. 1993, at 150.

pot, Parris Island.¹⁷⁵ The complainants apparently ignored the fact that the homosexual policy is ultimately a matter decided *not* by military commanders but by *civilian* leaders.¹⁷⁶

The misguided activists send the military community a troubling message. In effect they suggest that the defiance of the policies of civilian authorities by military commanders is appropriate. The activists imply that military officers should condition their actions not on the lawful dictates of the civilian leadership, but on their own assessment of the present—and future—political climate. Given the military's intensifying involvement in domestic activities, the potential arises for military officers to defy or subvert the directives of the civilian leadership when they decide that the civilian leadership is out of step with fashionable thinking.

The fifth reason for concern about the loss of civilian control is the evolution of the civilian authorities. The leadership responsible for civilian control of the military is fundamentally different in contemporary America than it was in earlier periods. In fact, the civilian leadership now bears little resemblance in background to the military that it must control. This development is discussed in more detail below.

B. The Rise of the Meritocratic Leadership Class

Paralleling the transformation of the military and its role in American society is the evolution of the United States civilian leadership. The assumption of power by the Clinton Administration was hailed as the arrival of the Meritocratic Class.¹⁷⁷ Defined as “those who rise economically and socially largely because of superior education rather than because they are propelled by external forces like family wealth or pedigree,”¹⁷⁸ the Meritocratic Class differs from previous leadership elites in an important way: Its members rarely serve in the military.¹⁷⁹

Yet again the influence of Vietnam is evident. When America withdrew from Vietnam in 1973, Congress ended conscription.¹⁸⁰ Though millions still serve in the all-volunteer force, sociologist Charles Moskos has insisted that military service is no longer a rite of passage for American politicians.¹⁸¹ The reason, of course, is partly statistical. The World War II generation—until quite recently the principal source of national leadership—saw eight of ten age-eligible males serve in the military. By 1995,

175. *Id.*

176. *See, e.g.*, Pub. L. No. 103-160, § 571, 107 Stat. 1670.

177. Paul Glasstris, *Life Among the “Meritocrats,”* U.S. NEWS & WORLD REP., Aug. 30, 1993, at 30.

178. *Id.*

179. *See* Nicholas Lemann, *The Curse of the Meritocratic Class*, WASH. POST, Feb. 9, 1992, at B4.

180. Eliot A. Cohen, *After the Battle: A Defense Primer for the Next Century*, NEW REPUBLIC, Apr. 1991, at 19.

181. Moskos, *supra* note 90, at 83, 86-87.

however, only *one* in ten will serve.¹⁸² Moreover, thousands of women are entering leadership positions. If women continue to comprise only a small portion of the armed services, the likelihood of persons with military experience assuming key posts diminishes even further.¹⁸³

Few of the new leaders in the Clinton Administration can claim military experience on their resumés. Forty-seven percent of the Clinton Administration's appointments went to women, who are less likely to have military experience than men; of the approximately 1,000 male designees, only about ten percent are veterans—even though approximately one-third would reflect the percentage in the population.¹⁸⁴ However, military experience counts. For example, in *Chappell v. Wallace*,¹⁸⁵ the Supreme Court noted that the framers of the Constitution anticipated the issues in the case because many "had recently experienced the rigors of military life and were well aware of the differences between it and civilian life."¹⁸⁶ Similarly, Congressman Ronald V. Dellums, an ex-Marine and a relentless critic of the military, stated, "I was a ground-pounder . . . I understand what the human condition is in the military."¹⁸⁷ An understanding based on personal experience is rare among the Meritocrats.

Ironically, the military is itself a meritocracy, but a very different one from that which produces the Meritocratic Class now assuming power. In the armed forces, advancement is based largely on the demonstrated ability to succeed in often difficult environments through the orchestration of a complex amalgam of people and machines. The Meritocratic Class, on the other hand, tends to overemphasize IQ and academic credentials at the expense of practical experience backed by proven results.¹⁸⁸ Meritocratic elites revel in the sophisticated repartee of Washington think tanks and university conferences, but may stumble when tasked to implement the theories discussed.¹⁸⁹

Popular opinion considers many Meritocrats "anti-military." Supported by oft-reported (and perhaps apocryphal) slights to military personnel, some contend that as "baby boomers" take positions of leadership they bring with them Vietnam-era animosity toward the armed services.¹⁹⁰ Vietnam veteran John Wheeler argued that "the Clinton Admin-

182. *Id.* at 86-87.

183. Women comprise less than 11% of the military. See DEPARTMENT OF DEFENSE, DEFENSE ALMANAC, *supra* note 128, at 30 (1993). Since the pool of potential women veterans is small, the likelihood of a female civilian leader having military experience is similarly reduced.

184. David S. Broder, *Clinton's Civilians*, WASH. POST, Nat'l Wkly. Ed., Jan. 3-9, 1994, at 4.

185. 462 U.S. 296, 300 (1983) (holding that enlisted military personnel may not maintain a suit to recover damages from a superior officer for alleged constitutional violations).

186. *Id.* at 300.

187. Pat Towell, *The Dellums Agenda*, AIR FORCE MAG., July 1993, at 46, 50.

188. E.g., Thomas E. Ricks & Michael K. Frisby, *How Inman Could Go From Star to "Bizarre" In Such a Short Time*, WALL ST. J., Jan. 21, 1994, at A1.

189. See generally David Ignatius, *The Curse of the Merit Class*, WASH. POST, Feb. 27, 1994, at C1.

190. See, e.g., Steven D. Stark, *Anti-Military Generation Takes Office*, L.A. TIMES

istration is largely a networked clique of people who were anti-military and anti-war during the 1960's and carry their biases with them still."¹⁹¹

While antimilitarism is undoubtedly a factor, it appears that the Meritocratic Class suffers more from ignorance about the military than from antimilitary bigotry. As military service becomes increasingly rare among the general population and as military education programs disappear from many college campuses,¹⁹² few opportunities allow for contact with anyone associated with the armed forces. Richard G. Miles, an Army reservist who attended the Georgetown University School of Foreign Service, wrote that his classmates were singularly unacquainted with military matters.¹⁹³ He contended that their ignorance, which he believed was *not* motivated by "some sort of militant pacifism or left-wing prejudice," would be "comical if it weren't for the fact that Georgetown grads end up in high places, including the presidency."¹⁹⁴ He added that "[a]lthough some students with a military background can occasionally be found at schools like Georgetown, they are vastly outnumbered by those who have had no personal contact whatsoever with those who serve in the U.S. armed forces."¹⁹⁵

Other commentators share similar views of the public's declining understanding of the military. "When it comes to the study of military affairs," A.J. Bacevich noted in *National Review*, "the attitudes of the baby-boomers now moving into dominant circles in government, media, and the academy run the gamut from uninterested to ignorant."¹⁹⁶ Whether such a cavalier attitude by the Meritocratic elites towards the military is sufficient to ensure civilian control is questionable. It depends in large measure upon the strength of the institutions of civilian control that they will lead.

VI. THE DECLINE OF THE SAFEGUARDS FOR CIVILIAN CONTROL OF THE MILITARY

In Professor Huntington's analysis of subjective civilian control of the military, he emphasized the vitality of the civilian institutions and the constitutional forms expected to exercise that control. The following section examines key institutions and forms of civilian control in the United States to determine if their strength in relation to the military is ebbing.

(Wash. Ed.), May 6, 1993, at 4.

191. See Broder, *supra* note 184 (quoting John Wheeler).

192. For example, in the last decade Reserve Officer Training Corps programs ended on over 100 campuses. See Carlton W. Meyer, *Separate ROTCs Are Unnecessary*, AIR FORCE TIMES, Dec. 13, 1993, at 39.

193. Richard G. Miles, *Those Who Fight, Those Who Decide*, NEWSWEEK, Nov. 22, 1993, at 12.

194. *Id.*

195. *Id.*

196. Bacevich, *supra* note 4, at 36. Bacevich is executive director of the Foreign Policy Institute at the Paul H. Nitze School of Advanced International Studies. *Id.*

A. *The Judiciary*

A division of power among the branches of government and the accompanying system of checks and balances is central to the constitutional scheme of civilian control of the military. By design, the courts are the least influential element in the scheme.¹⁹⁷ The judiciary realizes that control of the armed forces is essentially a political matter best left to the politicians. In *Gilligan v. Morgan*,¹⁹⁸ the Supreme Court stated: "It would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches directly responsible—as the judicial branch is not—to the electoral process."¹⁹⁹

When the political branches act, the courts usually defer. In *Solario v. United States*,²⁰⁰ the Court noted that "[j]udicial deference is at its apogee" when Congress' authority to govern the military is challenged.²⁰¹ Not only does the desire to defer to the electoral process motivate the courts, they also recognize that the judiciary lacks expertise in military affairs. The Court has emphasized the point:

[I]t is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially military judgments, subject always to the civilian control of the legislative and executive branches.²⁰²

Once the elected branches assign the military a mission, the Court readily gives military authorities considerable discretion to execute the task. For example, the Supreme Court declared in *Orloff v. Willoughby*,²⁰³ "Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."²⁰⁴ Similarly, in *Goldman v. Wein-*

197. Millett cited three contributions of the judiciary to the concept of civilian control of the military:

- (1) restraining the use of martial law and military action by regular forces in civil disturbances;
- (2) protecting the civil liberties of civilians (both American and foreign) from military abuses during times of war; and
- (3) extending to American servicemen the same set of individual legal protections provided civilians in the federal court system.

MILLETT, *supra* note 2, at 18.

198. 413 U.S. 1 (1973).

199. *Id.* at 4.

200. 483 U.S. 435 (1987).

201. *Id.* at 447 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 70 (1981)). However, "[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs." See *Rostker*, 453 U.S. at 67-68.

202. *Gilligan*, 413 U.S. at 4; see also *Chappell v. Wallace*, 462 U.S. 296, 305 (1983); *Brown v. Glines*, 444 U.S. 348, 360 (1980); *Middendorf v. Henry*, 425 U.S. 25, 96 (1976); *Schlesinger v. Ballard*, 419 U.S. 498, 510 (1975).

203. 345 U.S. 83 (1953).

204. *Id.* at 93-94.

berger,²⁰⁵ the Court stated that the judiciary "must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest."²⁰⁶

The Supreme Court recently reaffirmed its deference to the elected branches of government in *Weiss v. United States*,²⁰⁷ in which it approved Congress' scheme for the appointment of military judges. Another issue, not yet before the Court but almost certain to reach it, is the constitutionality of the "don't ask, don't tell" policy relating to gays in the military.²⁰⁸ In one sense a decision supporting the individuals challenging the government policy would seem to enhance the role of the judiciary as a means of civilian control. But in another, perhaps more important way, such decisions would undermine it.

Significantly, the policy concerning gays in the military is the product of a collaborative effort between the executive branch and Congress—the two key institutions of civilian control. Arguably, if an individual military member can defeat the combined wills of the elected branches of government, the ability of those branches to control the armed services becomes vulnerable. The military is an organization in which the essence of service "is the subordination of the desires and interests of the individual."²⁰⁹ Any action that promotes the rights of an individual over his or her civilian masters by definition erodes the latter's authority.

The courts, never expected to play a strong role in controlling the military, have not significantly checked military power as they have with other government powers. More often than not, the courts protect military interests from attempts by civilian entities to interfere with military

205. 475 U.S. 508 (1986).

206. *Id.* at 509. The case upheld the right of the Air Force to prohibit an officer from wearing a yarmulke while in uniform. Congress undermined the effect of the decision by enacting the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. No. 100-180, § 508(a)(2), 101 Stat. 1019, 1086 (1987) (codified in 10 U.S.C. § 774 (1988)), which authorizes the wearing of religious apparel in uniform except under certain limited circumstances. The Court earlier had upheld the exclusion of a civilian political candidate from a military base by noting that "nothing in the Constitution disables a military commander from acting to avert what *he perceives* to be a clear danger to the loyalty, discipline, or morale of troops" on his base. *Greer v. Spock*, 424 U.S. 828, 844 (1976) (emphasis added).

207. 114 S. Ct. 752 (1993). There are over 300 trailer cases raising the same issue. See Miriam Chapman, *Do Military Judges Pass Constitutional Muster?*, ARMY LAW., Oct. 1993, at 28 n.18. For a further discussion of the appointment of military judges, see Jonathan Lurie, *Presidential Preferences and Aspiring Appointees: Selections to the U.S. Court of Military Appeals 1951-1968*, 29 WAKE FOREST L. REV. 521 (1994).

208. Current litigation primarily involves a prior policy which excluded homosexuals on status as well as behavior grounds. "Don't ask, don't tell" is a euphemism to describe the new policy that focuses on conduct alone. The policy resulted from a compromise achieved by the Clinton Administration and Congress. The Administration decided to forego litigating the merits of the old policy to await challenges to the new one. See generally John Lancaster, *Administration Decision Not to Defend Homosexual Ban Is a Retreat of Sorts*, WASH. POST, Dec. 31, 1993, at 12. See also *supra* note 96.

209. *Orloff v. Willoughby*, 345 U.S. 83, 92 (1953).

activities. Courts avoid confrontation with the military²¹⁰ and plainly consider responsibility for civilian control of the military to lie principally with the executive and legislative branches. It remains to be seen, however, if the judiciary will depart from the traditional view when faced with the highly controversial issue of gays in the military.

B. *The Executive*

The Constitution assigns the bulk of power over the military to the executive and legislative branches.²¹¹ In the division of power, the designation of the President as Commander-in-Chief²¹² establishes the executive²¹³ as an indispensable element of civilian control.²¹⁴ Furthermore, the enormous pressures of World War II and the Cold War enhanced the primacy of the President in military affairs. The time-sensitive decisionmaking of the nuclear age fosters the centralization of control of military forces in the person of the President.²¹⁵ Thus, the American system of civilian control of the military relies on strong leadership from the Commander-in-Chief. As General Bruce Palmer, Jr. observed:

In our system of government, the president, with his dual role as civilian chief executive and commander-in-chief of the armed forces, is the indispensable key to national security. For the president to control the armed forces, he must command them . . . The president is the commander-in-chief and there is no substitute for his forceful and visible leadership in discharging this supreme command function over the Department of Defense and the armed forces.²¹⁶

Despite the traditional deference to the President and in yet another legacy of Vietnam, Congress challenged the President's authority to exercise supreme command over the armed forces. The 1973 War Powers Resolution,²¹⁷ born of concern for the long-term commitment of American

210. Professor Lurie argued that "judges have tried to avoid confrontations with the military, resulting during World War II, for example, . . . [in] decisions that cannot be reconciled with American standards of due process." See Lurie, *supra* note 33, at 145.

211. See generally Pablo Ruiz-Tagle, *Reflections on the Origins of American Military Institutions*, 2 U.S. AIR FORCE ACAD. J. LEGAL STUD. 113 (1991).

212. U.S. CONST. art. I, § 2, cl. 1.

213. The Constitution obliges the President to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3.

214. Professor Graebner believed the power of the President as Commander-in-Chief flows more from the "access to the public mind" than from any constitutional designation. Norman A. Graebner, *The President as Commander-in-Chief: A Study in Power*, J. MIL. HIST., Jan. 1993, at 111, 127-32. Millett believed that the Constitution intended Congress to be the more influential actor. MILLETT, *supra* note 2, at 7.

215. Howard E. Shuman argued that "the public, as well as politicians and pundits, generally accepts the powerful modern Presidency as necessary in a dangerous world." Howard E. Shuman, *Preface to THE CONSTITUTION AND NATIONAL SECURITY* xvii (Howard E. Schuman & Walter R. Thomas eds., 1990).

216. PALMER, *supra* note 59, at 201.

217. Pub. L. No. 93-148, 87 Stat. 555 (1973) (codified at 50 U.S.C. §§ 1541-1548 (1988)).

troops to hostile situations abroad, requires congressional approval of operations within specified time limits. According to Professor Norman A. Graebner, Congress sought to restore "the balance between the President's control of the armed forces and the right of Congress to determine their use."²¹⁸ Nonetheless, no president has accepted the constitutionality of the Resolution, and no court has ever decided the issue.²¹⁹ Whenever the Resolution seems to apply, Congress and the President strike an accommodation that allows both branches to insist on the correctness of their view.²²⁰

Unresolved, however, is the proper course for a military commander of a future operation in which an understanding between Congress and the President is not reached. The implications for civilian control are grave. Richard Kohn argued that if the branches of government responsible for civilian control of the military "are in such conflict that they defy each other, the U.S. military can be put in a position in which civilian control—even the Constitution itself—is in jeopardy."²²¹

The War Powers Resolution is a classic illustration in the military context of what Edward S. Corwin called "the invitation to struggle"²²² that is intrinsic to the Constitution's fabric.²²³ The concept, which embraces the balance of power between the legislative and executive branches of government, may serve a proper purpose for the apportionment of other responsibilities of government. However, it does not serve the needs of a military commander enmeshed in an overseas operation who faces conflicting demands from the Commander-in-Chief and the Congress.²²⁴ Moreover, the uncertainty that marks the seam between

218. Graebner, *supra* note 214, at 111, 131.

219. See generally John W. Rolph, *The Decline and Fall of the War Powers Resolution: Waging War Under the Constitution After Desert Storm*, 43 MERCER L. REV. 645 (1992) (discussing flaws of the War Powers Resolution); Ellen C. Collier, *War Powers Resolution: Presidential Compliance*, CONG. RES. SERV. ISSUE BRIEF (Jul. 29, 1991) (discussing several recent incidents in which U.S. troops were deployed abroad).

220. A recent example is the Senate's refusal to limit the President's powers to send troops to Haiti as part of a plan to facilitate the return to the island of Haitian president Jean-Bertrand Aristide. See Helen Dewar, *Clinton and Congress Cease Fire*, WASH. POST, Oct. 22, 1992, at 26.

221. KOHN, *supra* note 17, at 8.

222. Shuman, *supra* note 215, at xv (quoting Edward S. Corwin).

223. Millett asserted: "Since there has never been any particularly peaceful equilibrium in exercising civilian control between the president and Congress, it is silly to expect any. The Constitution in essence forbids it." MILLETT, *supra* note 2, at 60.

224. For example, if the President as Commander-in-Chief orders the continued deployment of troops in a hostile situation in defiance of a congressional mandate to the contrary, what is a military commander to do? Professors Kemp and Hudlin suggest that the commander would likely follow the orders of the President. See Kemp & Hudlin, *supra* note 10, at 10-11. Regardless of the disposition, such a precedent would permanently alter concepts of civilian control in this country. The "losing" party would forever know the military can spurn its direction. The authority of at least one of the two primary institutions of civilian control would be eviscerated. Thus, even a single significant incident undermining civilian control could dramatically alter the American political tradition. As historian Richard H. Kohn warned:

presidential and congressional authority²²⁵ creates what in military terms is known as a *schwerpunkt*,²²⁶ which is a weak point, vulnerable to exploitation by a politicized military. Thus, for example, analyst Barry Blechman pointed out that the military services "are notorious for seeking to sidestep decisions by the [executive branch] by appealing to friends [in Congress]."²²⁷

The jointness²²⁸ inspired by the Goldwater-Nichols Act also presents an institutional problem for the executive branch. As the military services adopt an increasingly unified perspective, the propensity to counterbalance each other diminishes. Huntington maintained that as the officer corps of the separate services become more unified, "this change will tend to increase [the military's] authority with regard to other institutions of government. It will speak with one voice instead of three."²²⁹ Indeed, the military already appreciates the value of a unified voice. Hedrick Smith explained in *The Power Game*:

By operating as a cartel, [the military services] foil attempts at ruling them, made by outsiders—including the secretary of Defense and his sprawling staff of 1,765 civilians The service military chiefs have a habit of withdrawing into the "tank"—their top-secret meeting area, generally off-limits to civilian officials—to broker their differences before civilian leaders intervene.²³⁰

With this backdrop, the Clinton presidency constitutes an especially important challenge to the efficacy of the executive branch as a vehicle for civilian control of the military. Perceived as improperly avoiding military service during the Vietnam War, the President also is viewed by many within and outside the military community as loathing the very concept of military service.²³¹ Like others in the Meritocratic Class, he is considered untutored in military affairs. In addition, President Clinton's

Once civilian control is violated, even by the most halting attempt, a certain purity is lost. The bond of trust between the military and society at large evaporates. A new, corrupting element, something previously unthinkable partly because it has never been attempted, is injected into the political process. Once this happens . . . [t]he possibility then forever lurks in the background

KOHN, *supra* note 17, at 38.

225. See generally C. Herman Pritchett, *National Security and the United States Judiciary*, in *THE CONSTITUTION AND NATIONAL SECURITY* 317, 320-25 (Howard E. Schuman & Walter R. Thomas eds., 1990). The courts often use the political question doctrine to "avoid dealing with a conflict between the president and Congress."

226. See EDWARD LUTTWAK & STUART L. KOEHL, *THE DICTIONARY OF MODERN WAR* 511 (1991).

227. BARRY M. BLECHMAN, *THE POLITICS OF NATIONAL SECURITY* 206 (1990).

228. See generally JOINT CHIEFS OF STAFF, *JOINT PUBLICATION 1, JOINT WARFARE OF THE US ARMED FORCES* (1991) (arguing that, to prevail in modern warfare, separate services must operate jointly).

229. HUNTINGTON, *supra* note 6, at 87.

230. HEDRICK SMITH, *THE POWER GAME: HOW WASHINGTON WORKS* 194 (1988); see also W. J. Holland, *Jointness Has Its Limits*, *PROCEEDINGS*, May 1993, at 39, 40.

231. Admiral Crowe contended that the perceptions of Clinton are unfair. See CROWE & CHANOFF, *supra* note 53, at 340-42.

support for placing women in combat roles and his desire to end the homosexual exclusion policy could not have been more ill-timed as these views assault the ethos of an organization already obsessively anxious about its future in the post-Cold War world.²³²

The President's unpopularity within the military combined with an almost universal distaste for his policies²³³ translated into a license to express dissatisfaction and even contempt for the Commander-in-Chief. The highly decorated, retired Army officer David Hackworth stated that "[i]n almost a half-century of soldiering or writing about it, I've never seen a president attacked so openly by the nation's fighting forces."²³⁴ Following a much-publicized visit to an aircraft carrier where the officers and crew made little effort to hide their contempt for President Clinton,²³⁵ even military leaders became alarmed. Chief of Staff of the Air Force General Merrill A. McPeak issued a letter reminding military personnel that the President stands at the top of the chain of command.²³⁶ Implicit was a thinly veiled warning to stop grouching about the Commander-in-Chief. Shortly after the issuance of the letter, Air Force Major General Harold N. Campbell nonetheless allegedly denounced the President as a "gay loving," "pot smoking," "draft dodging," "womanizer" in a speech to military personnel.²³⁷

The Campbell incident illustrates the dwindling utility of the Uniform Code of Military Justice²³⁸ as a tool for ensuring civilian control. If accurate, the reports of the Campbell case, appear to squarely establish a violation of Article 88 of the Code,²³⁹ a provision which criminalizes an

232. In November 1993, *Air Force Magazine* reported: "Morale and confidence of the troops are growing concerns. The men and women of the armed forces are more apprehensive than we have seen them in many years." *Warning Signs on National Security*, AIR FORCE MAG., Nov. 1993, at 2.

233. See, e.g., Richard A. Serrano & Art Pine, *Many in Military Angry Over Clinton's Policies*, L.A. TIMES, Oct. 19, 1993, at 1.

234. See David Hackworth, *Rancor in the Ranks: The Troops vs. The President*, NEWSWEEK, June 28, 1993, at 24. Presidential historian Richard Norton Smith said that the depth of feeling against President Clinton is unlike that of any relationship between the military and its civilian leadership in modern history. Carl M. Cannon, *Feeling Snubbed by Administration, Military Views Clinton with Growing Distrust*, BALT. SUN, Mar. 21, 1993, at 22.

235. Bacevich, *supra* note 4.

236. John Lancaster, *Air Force General Demands Tight Formation for Commander-in-Chief*, WASH. POST, Apr. 22, 1993, at 21.

237. Hackworth, *supra* note 234, at 24; see also Eric Schmitt, *Clinton Facing More Unease About Military*, N.Y. TIMES, June 9, 1993, at 17; *A Little Discipline from the Military*, L.A. TIMES, June 13, 1993, at M-4.

238. Uniform Code of Military Justice, 10 U.S.C. § 801-940 (1988).

239. See 10 U.S.C. § 888 (1988). The proscriptions of the Article are not limited to statements against the President. The full text protects a number of civilian officials:

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

Id.

officer's use of "contemptuous words against the President."²⁴⁰ Even though prosecutions are rare,²⁴¹ it would seldom seem more appropriate to prosecute such conduct than when the President's integrity and authority are openly questioned in the ranks. Despite this, General Campbell was not tried by court-martial. Instead, he received nonjudicial punishment,²⁴² a disciplinary action which by law is limited to "minor offenses."²⁴³ Thus, open and notorious disrespect for the Commander-in-Chief by a senior officer is now classified as a mere "minor offense." Reportedly, many in uniform still "privately salute" Campbell's remarks.²⁴⁴

The Campbell case follows other decisions which indicate that the military justice system is seldom able to address high-profile cases with political overtones involving senior officers.²⁴⁵ The President's inability to obtain respect, even through the military's disciplinary system, adversely affects his ability to control the military. Columnist Mark August called President Clinton a "man with a conscience," but observed:

Clinton suffers from being perceived as the political equivalent of a Rodney Dangerfield because of the low regard in which he is held by many people in the U.S. armed forces. Thus, without the ability to control the Pentagon during the nation's deliberation of critical issues, the President has been obliged to accept painful compromises.²⁴⁶

The president's role as Commander-in-Chief is not, however, the only means of control over the military that the Constitution provides the chief executive. The president also appoints key civilian leaders for the

240. *Id.*

241. There is only one reported case. *See United States v. Howe*, 37 C.M.R. 429 (C.M.A. 1967). Second Lt. Howe was convicted of an Article 88 violation for carrying a sign in a public demonstration that stated "LET'S HAVE MORE THAN A CHOICE BETWEEN PETTY IGNORANT FACISTS (sic) IN 1968" and "END JOHNSON'S FACIST (sic) AGGRESSION IN VIET NAM." *Id.* at 432.

242. *See* 10 U.S.C. § 815 (1988). Campbell reportedly was ordered to forfeit over \$7,000 in salary. Michael R. Gordon, *General Ousted for Derisive Remarks about President*, N.Y. TIMES, June 19, 1993, at 19.

243. 10 U.S.C. § 815(b) (1988).

244. Tom Miller & Matt Schofield, *Defense Cuts, Clinton Erode Life in Military*, KANSAS CITY STAR, July 11, 1993, at B-1, B-2.

245. Admiral Crowe discussed the 1968 incident involving the U.S. Navy spy ship *Pueblo* that was captured by North Korea. *See CROWE & CHANOFF, supra* note 53, at 57-74. Crowe reported that public opinion made the trial of the ship's captain implausible. *Id.* at 74. Another example is the failure to court-martial General John D. Lavelle, USAF, when he—in direct violation of the orders of his civilian superiors—bombed North Vietnam. *See Kemp & Hudlin, supra* note 10, at 9, 16-17. Authors Len Colodny and Robert Getlin argued that potentially embarrassing disclosures convinced the Nixon Administration not to discipline military personnel who were allegedly spying on the Administration. *See COLODNY & GETTLIN, supra* note 35, at 48-49. Furthermore, the Tailhook scandal has not produced any successful prosecutions. *See* Richard A. Serrano, *Prosecutors Strike Out With Tailhook Scandal*, L.A. TIMES, Dec. 19, 1993, at 41. For a discussion of the Tailhook scandal, see *supra* note 91.

246. Mark August, *Don't Hand an Easy Victory to Gen. Ahdid*, TAMPA TRIB.-TIMES, Oct. 3, 1993, at 5.

armed services and the Department of Defense.²⁴⁷ Indeed, the Clinton Administration's declared intent was to reassert the civilian control that they believed waned during prior administrations.²⁴⁸ The intent, however, has evidently faded. In June 1993 the *Washington Post* described the problem:

Civilian control of the military is a principle that the Clinton administration [is] . . . rightly defending. But there's a problem: To have some control over the Pentagon, the civilians have to be on the job and behind desks. And at the moment, a lot of desks are empty.²⁴⁹

As late as October 1993, the President still had announced his nominees for "only 26 of the top 46 Defense Department jobs that require Senate confirmation."²⁵⁰

Moreover, the Goldwater-Nichols Act²⁵¹ ensures that appointees who assume duties in the Department of Defense will confront a far more powerful and sophisticated Joint Staff than ever before. Prior to the legislation, the services seldom offered the best and brightest for duty with the Joint Staff.²⁵² Now, with joint service a prerequisite for promotion to senior rank, the very "sharpest" officers serve there.²⁵³ Consequently, not only are Meritocratic Class appointees less familiar with military affairs than their predecessors, but also they must oversee a much more astute and energized uniformed staff. Moreover, the Meritocrats work in an environment heavily dependent upon staff work and planning—tasks that civilians historically perform less ably than military professionals.²⁵⁴

Goldwater-Nichols affects executive branch appointees in other ways as well. By streamlining the chain of command between the President and the combatant commanders, Goldwater-Nichols theoretically improved command and control of the armed forces. However, it did so, according to Harry Summers, at the expense of the civilian service secre-

247. U.S. CONST., art II, § 2, cl. 2.

248. See generally Bruce B. Auster, *Pentagon Culture Clash*, NEWSWEEK, July 12, 1993, at 32; Barton Gellman, *Pin Stripes Clash With Stars and Bars*, WASH. POST, Nat'l Wkly. Ed., Jun. 28-Jul. 4, 1993, at 31.

249. *The Pentagon's Missing Civilians*, WASH. POST, June 27, 1993, at C6.

250. *Personnel Gap Yawns at the Pentagon*, WASH. POST, Oct. 1, 1993, at 23.

251. Pub. L. No. 99-433, 100 Stat. 992 (1986) (codified as amended in scattered sections of 10 U.S.C.).

252. Former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe noted that prior to Goldwater-Nichols "[i]t was unusual to find our most highly regarded officers laboring in the Joint Staff vineyard; many considered a tour there as a hurdle on the career path." CROWE & CHANOFF, *supra* note 53, at 148; see also JANOWITZ, *supra* note 62, at 350-54.

253. Lt. Gen. E. Ehlert, USMC, noted that the Marine Corps "used to send officers who were retiring to work on the Joint Staff—not since Goldwater-Nichols. Now we send our sharpest folks and so do the other services." Peter M. Chiarelli, *Beyond Goldwater-Nichols*, JOINT FORCE Q., Autumn 1993, at 71, 77. See also 10 U.S.C. § 619(e) (concerning requirements of joint duty for promotion).

254. See generally Marshall Brement, *Civilian-Military Relations in the Context of National Security Policymaking*, NAVAL WAR C. REV., Winter 1988, at 27, 28-30 (discussing differences between military and civilian thinking).

taries who, he observed, were "almost invisible during the Gulf War."²⁵⁵ By diminishing the role of the secretaries of the Army, Navy, and Air Force, Summers contended that Goldwater-Nichols removes an important buffer between the uniformed services and the political decision makers at the very time when "contentious issues [are] being pressed on the military services."²⁵⁶

In addition, ever since the years when Secretary Robert McNamara and the Vietnam-era "Whiz Kids" ruled the Pentagon, concerns existed about the quality of military advice available to the President.²⁵⁷ Congress addressed the problem in Goldwater-Nichols by substantially enhancing the role of the Chairman of the Joint Chiefs of Staff. To ensure that the professional military had a strong voice in national security affairs,²⁵⁸ Goldwater-Nichols established the Chairman as the military's spokesman.²⁵⁹

As the military's spokesman, General Colin Powell acquired unprecedented influence.²⁶⁰ Powell, a Vietnam veteran whose popularity far exceeded the President's,²⁶¹ opposed—with noteworthy finesse—some of Clinton's key military policy proposals.²⁶² Considered the consummate soldier-politician,²⁶³ Powell aggressively advanced his views to numerous audiences, including public ones.²⁶⁴ Powell presented his arguments too

255. Harry Summers, *Weakened Checks and Balances*, WASH. TIMES, May 27, 1993, at G-3.

256. *Id.*

257. See Douglas Kinnard, *McNamara at the Pentagon*, in *THE PARAMETERS OF WAR* 165 (Lloyd J. Matthews & Dale E. Brown eds., 1989). Millett insisted that the "apogee of civilian domination" in the Office of the Secretary of Defense occurred during the McNamara years. MILLETT, *supra* note 2, at 42.

258. See generally Albert Pierce, *Crises Management in the White House and the Pentagon*, in *MANAGING MILITARY CRISES* 51 (Preston Niblock ed., 1991).

259. See Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, § 201, 100 Stat. 992, 1004-08.

260. As the *New York Times* said of Powell, "much of his influence resulted from a change in the law in 1986 [Goldwater-Nichols] to consolidate the powers of Chairman and make him the single most important military advisor to the President." Eric Schmitt, *Powell Retires, as Popular With the Public as With His Troops*, N.Y. TIMES, Oct. 1, 1993, at 1. Goldwater-Nichols did not make the Chairman of the Joint Chiefs of Staff an actual military commander out of concern about concentrating power into the hands of a single military officer. See generally S. REP. No. 280, 99th Cong., 2d Sess. 3 (1986), reprinted in 1986 U.S.C.C.A.N. 2168, 2248 (discussing impact of Department of Defense Reorganization Act on Joint Chiefs of Staff); ROBERT PRVIDI, *CIVILIAN CONTROL VERSUS MILITARY RULE* (1988).

261. According to the *Air Force Times*, a survey by the Wirthlin Group rated General Powell as the country's most popular public official with a rating of 70.9% compared with 54.7% for Clinton. *Fast Track*, AIR FORCE TIMES, Dec. 13, 1993, at 16.

262. *A Chairman for Changing Times*, N.Y. TIMES, Aug. 14, 1993, at 18 (noting General Powell's opposition to President Clinton's proposals on homosexuals in the military in editorial on nomination of General John Shalikashvili as Chairman of Joint Chiefs of Staff).

263. CROWE & CHANOFF, *supra* note 53, at 229 (Admiral Crowe calling General Powell a "political general"). The *Times of London* described Crowe himself as "more of a political animal than a warrior." Martin Fletcher, *Grateful President Rewards Pentagon Politician's Loyalty*, THE TIMES (London), Feb. 23, 1994, at 12.

264. See generally Steven Stark, *President Powell?*, ATLANTIC MONTHLY, Oct. 1993, at

aggressively, according to military historian Russell F. Weigley.²⁶⁵ Professor Weigley argued that Powell's public opposition to intervention in Bosnia and his open resistance to the President's initial proposals concerning homosexuals in the military overstepped the proper role of a military officer.²⁶⁶ Weigley argued that, partly due to Powell's outspokenness, civilian control faces an uncertain future in the United States.²⁶⁷

The President's selection of General John Shalikashvili to replace Powell may reflect a desire to avoid another popular, and almost autonomous, uniformed officer. Unlike Powell, General Shalikashvili is, according to *Time*, "virtually unknown to the public and untutored in the ways of Congress and public relations."²⁶⁸ *Time* suggested that those qualities "could prove doubly attractive [to Clinton] if it makes [Shalikashvili] more compliant than his predecessor."²⁶⁹

Similarly, the designation of Admiral Bobby Ray Inman to succeed Les Aspin as Secretary of Defense appeared aimed at improving control over the military.²⁷⁰ Not all were enthusiastic. Though a retired military officer may legally serve as the senior civilian in the Department of Defense,²⁷¹ critic Saul Landau called the nomination of the retired admiral a "public surrender" of civilian control over the military.²⁷² In any event, Inman's charter surely included closing the gap between the military and the President.

Following Inman's sudden withdrawal of his nomination, President Clinton drafted former Deputy Secretary of Defense William J. Perry for the top spot. Considered a skilled and able technocrat, Perry may have the tools necessary to control the Pentagon.²⁷³ Together these appointments may help the Clinton Administration improve relations with the military. Indeed, *U.S. News & World Report* predicted that the President "will almost certainly make peace with the military in 1994."²⁷⁴ It concedes, however, that the peace "will probably have to be on the military's terms."²⁷⁵

The decline of the executive as a force for civilian control might be

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265. Weigley, *supra* note 4, at 27-32.

266. *Id.*

267. *Id.* at 58.

268. Bruce Van Voorst, *Military Maneuvers*, *TIME*, Aug. 23, 1993, at 35.

269. *Id.*

270. See, e.g., Stephen C. LeSuer, *Inman's Job: Close Military-Clinton Gap*, *DEF. NEWS*, Dec. 20-26, 1993.

271. An officer may not be appointed Secretary of Defense "within 10 years after relief from active duty as a commissioned officer of a regular component of the armed services." 10 U.S.C. § 113(a) (1988).

272. Saul Landau, *How the Military Brass Captured Clinton*, *BALT. SUN*, Jan. 4, 1994, at 11.

273. See John Lancaster, *Can Perry Run the Defense*, *WASH. POST*, Nat'l Wkly. Ed., Jan. 31-Feb. 6, 1994, at 10.

274. Bruce Auster, *Will Clinton and the Military Make Peace in 1994?*, *U.S. NEWS & WORLD REP.*, Dec. 27, 1993-Jan. 3, 1994, at 52.

275. *Id.*

dismissed as a transitory phenomenon idiosyncratic to the Clinton Administration. Such a conclusion, however, is overly simplistic. The American people almost certainly will elect future presidents who lack a military orientation. Future administrations will find it similarly difficult to produce sufficient numbers of knowledgeable and experienced Meritocratic Class civilians capable of matching the growing expertise and sophistication of the Joint Staff and other senior military leaders.

It appears that the struggle between the executive and the legislative branches for primacy in military affairs will leave both, but particularly the executive,²⁷⁶ vulnerable to manipulation by the military establishment. With a military justice system seemingly incapable of holding accountable senior officers who commit offenses that undermine civilian control, future Commanders-in-Chief will find it difficult to control popular military leaders heading an equally popular military establishment.²⁷⁷ As the military becomes more involved and influential in domestic affairs, controlling it may present the executive with a political problem of the first order.

C. Congress

The Constitution assigns to Congress great responsibility for exercising civilian control of the military.²⁷⁸ Article I grants the legislature the authority to declare war,²⁷⁹ make rules and regulations for the military,²⁸⁰ advise and consent to the appointment of officers,²⁸¹ call forth the militia,²⁸² and, most important, raise and support an army²⁸³ and a navy.²⁸⁴

276. In the context of foreign policy, Eugene Rostow, citing the War Powers Resolution and other congressional initiatives, asserts that "the power of Congress is growing, and that of the President is being leached away." EUGENE V. ROSTOW, PRESIDENT, PRIME MINISTER, OR CONSTITUTIONAL MONARCH? 45 (1989) (McNair Papers No. 3, Inst. for Nat'l Strategic Stud.).

277. Conor Cruise O'Brien observed:

When he became president and tried to honor his promise [to end the homosexual exclusion policy], he was taking on the military establishment of the United States, which is immensely powerful, not only on land, sea, and air, but also in the media. And I don't think it is a coincidence that the period of his confrontation with the generals over gay rights was also one of the worst patches in terms of media coverage that any president has had to endure.

Conor Cruise O'Brien, *At Ease With His Generals Now*, THE INDEPENDENT, Nov. 5, 1993, at 10.

278. Millett believed that in the division of powers in the Constitution, Congress was intended to be the "more influential actor." MILLETT, *supra* note 2, at 7. The Court of Military Appeals also noted, "Because of national security interests and concern for unforeseen military exigencies, it was the intent of the Framers to vest very great authority over these matters in Congress." *United States v. Weiss*, 36 M.J. 224, 236 (C.M.A. 1992) (quoting LAWRENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 353-56 (2d ed. 1988)), *aff'd*, 114 S. Ct. 752 (1994).

279. U.S. CONST. art. I, § 8, cl. 11.

280. U.S. CONST. art. I, § 8, cl. 14.

281. U.S. CONST. art. II, § 2, cl. 2.

282. U.S. CONST. art. I, § 8, cl. 15.

283. U.S. CONST. art. I, § 8, cl. 12.

Despite its powers, Congress' propensity to assert itself in military matters has waxed and waned over the years.

Since the Vietnam War, however, Congress has sought to become much more active in the management and oversight of military affairs.²⁸⁵ Aided by a quintupling of its staff since 1974, Congress annually makes 750,000 inquiries of the Pentagon and demands 750 yearly reports.²⁸⁶ Furthermore, the Congress created potent support agencies like the General Accounting Office (GAO), a huge 5,000 person investigatory organization that frequently targets the military.²⁸⁷

The "power of the purse"²⁸⁸ unquestionably gives Congress its strongest leverage over the military and its principal competitor for control of the military, the executive branch.²⁸⁹ Congress readily demonstrates its independence in this regard. For example, the Fiscal Year 1994 defense budget was less than the amount sought by both the Pentagon and the Clinton Administration.²⁹⁰

When designing Congress' fiscal check on the growth of military power and influence, the Founding Fathers never contemplated the effect of the large peacetime military establishments that followed World War II.²⁹¹ Defense spending became a major sector of the economy with "whole communities depending on defense bases, laboratories, and contractors."²⁹² In the ensuing scramble for billions of defense dollars, members of Congress made defense decisions based on parochial, constituent interests rather than national concerns.

In addition, the military undermines the fiscal check because it is a particularly effective lobbyist. Like other agencies of government, the armed forces are technically proscribed from lobbying, although they may "communicate" with Congress.²⁹³ Nevertheless, the military services em-

284. U.S. CONST. art. I, § 8, cl. 13.

285. BLECHMAN, *supra* note 227, at 3-22; MILLETT, *supra* note 2, at 47.

286. See Book Review, NAT'L SEC. L. REP., Sept. 1993, at 3 (reviewing JOHN LEHMAN, *MAKING WAR: THE 200-YEAR-OLD BATTLE BETWEEN THE PRESIDENT AND CONGRESS OVER HOW AMERICA GOES TO WAR* (1992)).

287. Congress also has the Congressional Research Service, the Congressional Budget Office, and the Office of Technology Assessment to facilitate the oversight process. See MILLETT, *supra* note 2, at 48.

288. U.S. CONST., art. I, § 9, cl. 7. See generally Kate Stith, *Congress' Power of the Purse*, 97 YALE L.J. 1343 (1988) (discussing Congress' appropriations powers and its limitations and effect on the executive).

289. "Congress' control of the purse is a far greater power than the President's as commander in chief." See Graebner, *supra* note 214, at 118.

290. See Eric Schmitt, *\$261 Billion Set for the Military*, N.Y. TIMES, Nov. 7, 1993, at 25.

291. See SWOMLEY, *supra* note 55, at 99-112 (describing Pentagon's economic power and its threat to American democracy).

292. THOMAS L. MCNAUGHER, *NEW WEAPONS, OLD POLITICS* 10 (1989).

293. 18 U.S.C. § 1913 (1988). The statute provides in part:

No part of the money appropriated by any enactment of Congress, shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any man-

ploy a number of imaginative techniques to influence legislation. According to Hedrick Smith, they "unabashedly lobby senators and House members"²⁹⁴ by flattering them "with courtesies and perquisites"²⁹⁵ such as domestic and foreign trips.²⁹⁶ More disturbing, the military often will ensure support by spreading the procurement of expensive weapons systems over scores of congressional districts.²⁹⁷ Smith also insisted that the "military can turn off the faucet" when displeased with a legislator.²⁹⁸ Even the most vociferous military critic is subject to pressure when the economic livelihood of constituents is at stake. *Armed Forces Journal* alleged that Congressman Ron Dellums "was probably right" when the military critic charged that the closing of four military bases in his district was politically motivated.²⁹⁹ The magazine blamed the Pentagon, claiming its "temptation to deal poetic justice was likely more than it could resist."³⁰⁰

Nevertheless, with the decline of executive control of the military, Congress has emerged as the most effective agent of civilian control. However, Congress—like the executive—is beginning to feel the effects of the rise of the Meritocratic Class. The election of 1982 pushed the percentage of military veterans in Congress below fifty percent for the first time since before Pearl Harbor.³⁰¹ Additionally, after the 1994 election, half of Congress may have less than six years of seniority.³⁰² Such a development, compounded by the youth and inexperience of the vast majority of its 20,000 staffers,³⁰³ indicates that Congress' expertise in military affairs will suffer.

Evidence of the Meritocratic Class emerges elsewhere. Former Secretary of Defense Caspar W. Weinberger, for example, faulted GAO reporting—upon which Congress depends—because the GAO is staffed by

ner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business

Id.

294. SMITH, *supra* note 230, at 185.

295. *Id.*

296. *Id.*; see, e.g., Jim Drinkard, *Military Aircraft Booked Solid with Hill "Fact-Finders,"* WASH. TIMES, Dec. 28, 1993, at 1.

297. For example, contracts related to the controversial B-1 bomber were spread over 48 states. See SMITH, *supra* note 230, at 179-82.

298. *Id.* at 185.

299. See David Silverberg, *Congress: Friend or Foe?*, ARMED FORCES J., Jan. 1994, at 10, 10-11.

300. *Id.*

301. Moskos, *supra* note 90, at 86.

302. See Richard S. Dunham, *Washington is Becoming a City of Amateurs*, BUS. WK., Oct. 11, 1993, at 47.

303. GANSLER, *supra* note 69, at 110.

people who "neither understand nor like the military."³⁰⁴ Consequently, Congress is hampered directly and indirectly in its efforts to control the military.

Congress also is the institution that suffers most from a loss of public confidence vis-a-vis the military. It finished dead last in the 1993 Harris poll that showed the military as the institution with the public's highest confidence.³⁰⁵ Furthermore, in a stark indication of the public's disgust with elected government, an August 1993 poll revealed that fifty percent of Americans believe Congress is corrupt.³⁰⁶ The numbers suggest that a poll-sensitive Congress must exercise caution when asserting its authority over the highly respected military. Otherwise it risks imperiling its already depressed standing in the public's perception.

In a larger sense, the breakdown of party discipline and the increasing fragmentation of Congress leaves the institution vulnerable. Robert J. Bresler argued that power in Washington has "never been more diffuse."³⁰⁷ Congress, he noted, "lacks a clear sense of where it wants to go."³⁰⁸ As long as its members pursue divisive "personal agendas, legislative relationships, and national constituency politics,"³⁰⁹ Congress will struggle to achieve the authoritative consensus most conducive to overseeing a popular, united, and sophisticated military.

D. *The Press*

The Constitution provides an important indirect check on military power: a free press.³¹⁰ The potency of the check has been keenly understood by the military. For example, Napoleon declared that "four hostile newspapers were more to be feared than a thousand bayonets."³¹¹ Similarly, Shakespeare correctly observed that "men wearing rapiers are afraid of goose-quills."³¹² While not a formal mechanism of civilian control of the military, the press has tremendous potential to limit military ambitions.

It is virtually an article of faith within the United States armed forces that the press is instinctively hostile to the military.³¹³ Much of this is yet another vestige of the Vietnam conflict, in which the media is viewed as having played "a principal role in eroding public support" for the war.³¹⁴ Like other lessons of Vietnam, the armed forces learned from

304. Caspar W. Weinberger, *Commentary*, FORBES, Aug. 2, 1993, at 35.

305. See Correll, *supra* note 93, at 26.

306. *Outlook*, U.S. NEWS & WORLD REP., Aug. 16, 1993, at 10; see also Kevin Merida, *It'll Take an Act of Congress to Clean Up Its Image*, WASH. POST, Nat'l Wkly. Ed., Feb. 7-13, 1994, at 13.

307. Robert J. Bresler, *Politics of Dissatisfaction*, USA TODAY MAG., Nov. 1993, at 15.

308. *Id.*

309. BLECHMAN, *supra* note 227, at 202.

310. U.S. CONST. amend. I.

311. THE SWORD AND THE PEN 9 (Adrian L. Hart ed., 1976).

312. *Id.*

313. MILLETT, *supra* note 2, at 55.

314. E. L. Pattulo, *War and the American Press*, PARAMETERS, Winter 1992-93, at 61,

its mistakes.

When the Gulf War broke out, the military was prepared. The press, on the other hand, was not. The staff of *U.S. News & World Report* in *Triumph Without Victory* issued a harsh assessment of their colleagues:

Journalists poorly prepared to cover war, high technology, and international diplomacy were assigned to cover the conflict in the Gulf. A great many embarrassed the profession. By contrast, briefers provided to the press by the military seemed, more often than not, professional, knowledgeable, and worthy of trust. The situation became so bad that "Saturday Night Live" aired a skit satirizing the performance of the press corps assigned to cover Desert Storm and lauding the military.³¹⁵

During the Gulf War, the military learned to exploit the tremendous power of images to shape public opinion. Advanced munitions guidance systems and intelligence technology enabled it to obtain a mass of photographs and videos. Because they controlled these sources, military authorities could select powerful images that favorably reinforced the story that the military wished to tell.³¹⁶ In doing so, the military capitalized on the increasing propensity of Americans to rely on television for news.³¹⁷ To the extent it controls the images, the military can exploit the "videocentric prejudice," that is, the uncritical belief that what is seen in visual representations is, in fact, true.³¹⁸

The Gulf War exposed other difficulties in the press' attempt to cover the military. Today's military can move vast distances at enormous speeds in places where civilian transportation is limited or nonexistent. Weaponry with a range and destructive power that often exceeds its ability to distinguish between enemy troops and noncombatant reporters make press excursions independent of military escorts not only difficult and expensive,³¹⁹ but exceptionally dangerous. To further complicate matters, media representatives covering the military in austere locations often depend upon military communication channels to dispatch their stories. Consequently, the media is sometimes obliged to court the military to ensure access and support.

Today's military also employs advanced training techniques to manage the media. In addition to rigorous training primarily directed at sen-

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315. U.S. NEWS & WORLD REP., *TRIUMPH WITHOUT VICTORY: THE HISTORY OF THE PERSIAN GULF WAR* 413 (1992).

316. See John Pilger, *A One-Sided Bloodfest*, NEW STATESMAN & Soc'y, Mar. 8, 1993, at 9.

317. See generally Dennis M. Drew, *How Television Shapes Foreign Policy*, AIR FORCE TIMES, Nov. 29, 1993, at 39.

318. What makes the videocentric prejudice so vulnerable to manipulation is that the ordinary viewer does not take into account the images' context, the impact of camera rhetoric, or the effect of selective presentation. See *Is Viewing a Threat to Democracy?*, USA TODAY MAG., Apr. 1993, at 15.

319. Dennis M. Drew argued that the press engages in "journalism on the cheap," that is, it avoids the stories that are "far from popular watering holes and often difficult to reach." Drew, *supra* note 317, at 39.

ior officers,³²⁰ the services now educate even low ranking soldiers to handle the press. Thus, in February 1993 the National Training Center (NTC) began a program integrating media training with regular battlefield exercises.³²¹ Canny military instructors argued that "[l]earning to respond to reporters is *just as important* as learning to kill the enemy."³²² While much of the training instructed soldiers to avoid violating operational or mission security, there is little doubt that it is also meant to shape the military's public image. As the noncommissioned officer in charge of the NTC's "Media on the Battlefield" exercise insisted, "[soldiers] have got to be able to tell a positive Army story."³²³

It is a gross error, however, to underestimate the press' ability to affect military activities. Many observers believe the media decision to air film of starving children led to the deployment of American troops in Somalia.³²⁴ Most also agree that the images of a captured American airman and of the abuse inflicted on the body of a dead soldier led to the withdrawal.³²⁵

Whatever the news business is today, it remains a business. News executives, especially after the media fiasco of the Gulf War, must appreciate the huge disparity between the public's confidence in the armed forces and their own profession.³²⁶ Thus, while a willingness still exists to harshly critique the civilian portion of the military establishment, the media has scrutinized the uniformed ranks more gingerly.³²⁷ To many, the change is baffling. Columnist Fred Reed speculated that the less hostile reporting might be a result of a "new crowd" of less jaundiced post-Vietnam-era journalists favorably impressed by the military's Gulf War performance.³²⁸

Much of the press suffers the same lack of a thorough comprehension

320. See CROWE & CHANOFF, *supra* note 53, at 224 (discussing the Air Force Media Training Team).

321. Chris Murray, *Troops Learn How to Deal with Shelling from Reporters*, AIR FORCE TIMES, June 7, 1993, at 28.

322. *Id.* (emphasis added) (quoting Master Sergeant James Edwards of the operations center of the National Military Training Center, Fort Irwin, California).

323. *Id.* (quoting Sergeant 1st Class Mary Pollard).

324. *E.g.*, Drew, *supra* note 317.

325. See, e.g., Richard Harwood, *Ruling Class Journalists*, WASH. POST, Oct. 30, 1993, at A21.

326. In a Gallup poll released in April 1993, 68% of those polled said they had a "great deal" or "quite a lot" of confidence in the military; television news received that rating from 48% of the public, while newspapers garnered a mere 31% grade. See Moore, & Newport, *supra* note 113, at 24.

327. For example, when 18 American troops died and 78 were wounded during an October 3, 1993, raid in Mogadishu, Somalia, media attention focused on an earlier decision by Secretary of Defense Les Aspin to deny a military request for armored vehicles. Although it was later determined that the refusal of the armor did not cause the casualties, the focus remained on the Secretary. Calls for the Secretary's resignation ultimately succeeded. See, e.g., Bill Gertz, *Senate Committee Investigates Pentagon's Policy in Somalia*, WASH. TIMES, Nov. 10, 1993, at 1.

328. Fred Reed, *Reformers Are Gone—Good Riddance*, AIR FORCE TIMES, Sept. 20, 1993, at 59.

of military affairs as the other civilian institutions that control the military, and for much the same reason: It is staffed by the Meritocratic Class. The press' expertise³²⁹ is declining at the very time the military's ability to deal with the media has become more effective. The development can adversely affect civilian control of the military. Addressing the potential dangers of the military-industrial complex, President Eisenhower counselled that "it is only a citizenry, an alert and informed citizenry which can keep these abuses from coming about."³³⁰ While the press remains, a powerful—arguably the *most* powerful—check on the military, the media's status as a forceful safeguard of civilian control is not assured.

E. The Militia

By providing for a militia in the Constitution, the Framers sought to strengthen civilian control of the military.³³¹ They postulated that a militia composed of citizen-soldiers would curb any unseemly ambitions of the small standing army.³³² Today's National Guard is often perceived as the successor to the militia, and observers still tout the Guard's role as the ultimate restraint on the professional military.³³³

The reality, however, is much different. Today's National Guard is a very different force from the colonial-era militia.³³⁴ With 178,000 full-time federal employees and almost all of its budget drawn from the federal government,³³⁵ the National Guard is, for all practical purposes, a federal force.³³⁶ Indeed, one commentator concluded that it is very much akin to

329. See, e.g., Fred Reed, *How Smart Are Reporters?*, AIR FORCE TIMES, Dec. 6, 1993, at 78.

330. STEPHEN E. AMBROSE, *EISENHOWER: SOLDIER AND PRESIDENT* 538 (1990). Thomas Jefferson believed a free press to be more important than government itself. He remarked that if obliged to choose between a government without newspapers and newspapers without governments, he would "not hesitate for a moment to prefer the latter." THE MACMILLAN DICTIONARY OF POLITICAL QUOTATIONS 404 (Lewis D. Eigen & Jonathan P. Siegal eds., 1993). Likewise, General George C. Marshall contended that:

In our democracy where the government is truly an agent of the popular will, military policy is dependent on public opinion, and our organization for war will be as good or as bad as the public is well informed or poorly informed regarding the factors that bear on the subject.

Kohn, *Introduction*, *supra* note 27, at 1.

331. See generally Fields & Hardy, *supra* note 18.

332. See KOHN, *supra* note 17, at 84-85.

333. See *Commentary & Reply*, PARAMETERS, Autumn 1993, at 105, 107-08 (letters of Lt. Gen John B. Conaway, U.S. Air Force, Chief, National Guard Bureau; Col. Reid K. Beveridge, Delaware Army National Guard).

334. See generally Allan R. Millett, *The Constitution and the Citizen Soldier*, in THE UNITED STATES MILITARY UNDER THE CONSTITUTION 1789-1989, at 97 (Richard H. Kohn ed., 1991).

335. The federal government provided \$4.7 billion for National Guard and reserve pay in fiscal year 1992. DEPARTMENT OF DEFENSE, DEFENSE ALMANAC, *supra* note 128, at 23.

336. David R. Segal explained the reason for the evolution into a much more federally oriented force: "Americans acknowledged the problems of mobilizing for major wars a militia that was organized by the governments of the states, and Americans increasingly central-

the "standing army" against which the Founding Fathers railed.³³⁷ Despite the National Guard's record of achievement in combat support roles, the fighting ability of part-time soldiers clearly does not match that of active duty forces.³³⁸ As a result, the citizen-soldiers do not meaningfully check the power of full-time professionals.

Perhaps due to its inability to compete with active forces in the combat sphere,³³⁹ the National Guard enthusiastically pursues noncombat domestic missions.³⁴⁰ The Guard has dual state and federal³⁴¹ status and very often conducts missions in their "state" status.³⁴² Theoretically, the citizen-soldiers are under local control. This concept is more chimerical than factual since virtually all of the indoctrination, training plans, and resources come from the federal government. In addition, as domestic missions proliferate they acclimate society to a military presence in a variety of local matters. Few members of the public appreciate the technical "status" distinction of a National Guard whose outward appearance and equipment is indistinguishable from that of the active duty military. Consequently, the National Guard may unwittingly further the influence of the active duty military in domestic affairs.

Despite similarities with the full-time military, the National Guard has no apolitical tradition. With units in every state, it unabashedly asserts political power.³⁴³ In the near future, this politicized force will become more integrated with the active duty military. Specifically, following the much-discussed "bottom up" review of U.S. military strategy for the remainder of the 1990's, the Pentagon has called for greater Guard in-

ized the control of the military mobilization system in the federal government." See SEGAL, *supra* note 53, at 151.

337. Fields & Hardy, *supra* note 18, at 2.

338. Study after study shows that part-time soldiers simply do not train sufficiently to function effectively in ground combat maneuver units. See Richard L. Stouder, *Roundout Brigades: Ready or Not?*, MIL. REV., June 1993, at 38, 38-49 (citing studies by the General Accounting Office, the Department of the Army Inspector General, and the Congressional Research Service).

339. See Philip Drew, *Taking the Guard Out of Combat*, NAT'L GUARD, Apr. 1991, at 38.

340. According to National Guard Bureau Chief Lt. Gen. John B. Conaway, "We are getting heavier and heavier each day in America and around the world into what we call nontraditional roles." *New Civilian Tasks for the Military*, *supra* note 132.

341. See generally 32 U.S.C. (1988).

342. For example, Guard members typically performed law enforcement activities in their status as state employees, as distinguished from their federalized status, when they were incorporated into the active United States military. See National Defense Authorization Act, Pub. L. No. 100-456, § 1105, 102 Stat. 1918, 2047 (1988).

343. The *Washington Post* reported: "With an armory in virtually every congressional district and an officer corps made up of stockbrokers, lawyers, and the like, the [Guard and reserve] forces command a political clout and a share of the defense budget that far outstrips their military mission." Barton Gellman, *Pentagon Plan Would Cut Reserve*, WASH. POST, Dec. 11, 1993, at A1. Likewise, the *Los Angeles Times* noted that the National Guard exercises "stunning political power and influence, both among state and local government and in the power centers of Washington." Art Pine, *In Defense of 2nd Line Defenders*, L.A. TIMES, Mar. 13, 1992, at 1; see also Rick Maze, *Political Clout Shields Guard, Reserve from Cuts*, ARMY TIMES, Oct. 18, 1993, at 19.

v involvement in plans to fight two simultaneous regional wars.³⁴⁴ As the Guard becomes more integrated with the military services, the Guard's aggressive political culture may generate unforeseen difficulties.

Notwithstanding efforts to improve the combat skills of the Guard, it is unlikely that it will ever develop into a force capable of control of the active duty military as the Founding Fathers hoped the militia would. Ideally, greater integration of the Guard with the active forces will "civilianize" the professional military and enhance civilian control. The more likely scenario, however, is that the Guard will pave the way for greater military involvement in domestic activities. Such a development, if accompanied by a merger of the growing politicization of the active forces and the Guard's existing political clout, could result in a unified force with enormous potential to frustrate civilian control.

VII. AN AMERICAN MILITARY COUP?

Even the slightest suggestion of a military coup is almost unheard of in the American political tradition. Today's military officers are no more *consciously* disposed toward the improper aggrandizement of power than those of any other age.³⁴⁵ Yet it is precisely this fact that makes the military's current drift into civilian affairs so insidious. Without malice aforethought, a political structure that may be subject to nefarious exploitation in the future is being validated.

In the context of Finer's models,³⁴⁶ military intervention into politics in the United States does not yet exceed a level of dynamic influence. Likewise, not all influence is improper. As Finer recognized, military organizations, like other agencies of government have the right, if not the obligation, to persuade the government to adopt their views of matters properly within their area of responsibility.³⁴⁷ Threats to civilian control arise when that "area of responsibility" expands to include problems that should be left to the civilian leadership to resolve, such as economic and social problems. Furthermore, military influence improperly erodes the principle of civilian control when it results not from the innate worth of the military's views, but from the growing power of a popular, respected military deeply inculcated into a political environment characterized by weakened democratic institutions. This scenario has not yet occurred in the United States. A commentator warned, however, that while the United States military has not shown the "slightest inclination to lust for political power," the potential to do so "always lurks where power and respect converge."³⁴⁸

344. Eric Schmitt, *Pentagon Sees A Greater Role for Reservists*, N.Y. TIMES, Sept. 3, 1993, at A1.

345. According to journalist Thomas E. Ricks, "military officers don't dwell on the civilian-military relationship—they take it for granted." See Thomas E. Ricks, *Colonel Dunlap's Coup*, ATLANTIC MONTHLY, Jan. 1993, at 23, 25.

346. For a discussion of Finer's model, see *supra* notes 82-83 and accompanying text.

347. FINER, *supra* note 24, at 128.

348. Martin Anderson, *The Benefits of the Warrior Class*, BALT. SUN, Apr. 14, 1991, at

Moreover, the danger of a challenge to civilian control is exacerbated when the military perceives itself to be under stress, as it does today.³⁴⁹ A.J. Bacevich, the executive director of the Foreign Policy Institute at the Paul H. Nitze School of Advanced International Studies, recently described the implications of today's military environment in *National Review*:

The post-Cold War military environment—institutional uncertainty (how deep will the cuts go?), burgeoning technological change (what is the face of modern warfare?), renewed interest in social experimentation (what is the role for women and gays?), combined with *expanding* expectations of what the military can and ought to do to make peace, succor the afflicted, and respond to disasters--fosters conditions where civil-military harmony should not be taken for granted. To foresee the potential for friction is a far cry from declaring it inevitable. To predict that it could lead to anything like a military coup would strike most Americans as far fetched. Yet ignoring the military distemper will only allow it to fester.³⁵⁰

As the United States approaches the twenty-first century, a modern trend not only allows the military's distemper to fester, but also changes the nation's relationship with its military. Specifically, the country's traditional antimilitarism is being replaced by what might be called *postmodern militarism*.

Unlike conventional militarism,³⁵¹ postmodern militarism is *not* marked by overt military dominance or even a societal embrace of martial values. To the contrary, in the United States it arises in a citizenry which largely embraces permissive individualism—hardly a military trait. Postmodern militarism admires the effectiveness of the military but rejects for civilian society the discipline and sacrifice necessary to achieve it. Postmodern militarism also is characterized by the proclivity to define a nation's place in the world in terms of military strength.³⁵² Paradoxically, another of its cardinal features is the populace's corporate unfamiliarity with the true nature of the military. The nation's people celebrate military power without truly understanding the institution that produces it. Likewise, postmodern militarism looks to the armed forces for answers to perplexing societal problems without apprehending the long-term implications of military-derived solutions.

The Meritocratic leadership elites display a postmodern militarism that considers the armed forces much like a bright, loyal, and hardworking servant who conveniently undertakes difficult and unattractive tasks, but who most assuredly lacks the enterprising aptitude for invidious am-

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349. See generally Tom Philpott, *The Mood of the Military*, AIR FORCE TIMES, Jun. 14, 1993, at 14.

350. Bacevich, *supra* note 4.

351. For a discussion of traditional militarism, see Charles Townsend, *Militarism and Modern Society*, WILSON Q., Winter 1993, at 71.

352. *Id.*

bition. The Meritocratic elites prize the capabilities and sense of power that the military appears to afford them, but their appreciation does not extend to genuine respect on terms of equality. As with any valued employee, the Meritocrats desire cordial relations with the armed forces, but avoid personal association with a military that they view as intellectually plebeian and, therefore, unlike themselves.

Both the Meritocratic elites and the American people fail to comprehend today's military from which they are increasingly estranged. More than ever before, the military is, as the Supreme Court commented, "a specialized society separate from civilian society."³⁵³ The separation is attributable to the military's unique responsibility for national defense in general, and warfighting specifically. To accomplish its mission, the military must foster, as the Court observed in *Goldman v. Weinberger*,³⁵⁴ "instinctive obedience, unity, commitment, and esprit de corps."³⁵⁵ Military personnel perceive most of American society as conspicuously lacking those qualities. Not surprisingly, therefore, they often prefer to live in their own military enclaves, complete with homes, schools, churches, stores, and entertainment facilities.³⁵⁶ From their virtually crime-free, orderly communities, they "tend to view the chaotic civilian world with suspicion and sometimes hostility."³⁵⁷

The separation of the military from civilian society provides an added challenge for civilian control of the military. Military professionals ordinarily seek to establish order out of chaos.³⁵⁸ Survival may depend upon a unit's ability to maintain order in the confusion of the battlefield. To meet the demands of combat, the military governs itself in an unapologetically authoritarian way; it rarely seeks the consensus or tolerates the dissent that civilian society takes for granted. The military is by no means a democracy; indeed, the military is the antithesis of democracy.³⁵⁹ What postmodern militarism fails to grasp is that military personnel are untroubled by the authoritarian system in which they live; indeed, they cherish the harmony it provides. Members of the armed services do not necessarily admire or desire the unbridled individualism enjoyed by civil-

353. *Parker v. Levy*, 417 U.S. 733, 743 (1974). Military analyst Arthur T. Hadley labeled the separation the "Great Divorce." ARTHUR T. HADLEY, *THE STRAW GIANT* 22 (1986). He also defined it as "the less-than-amicable separation of the military from the financial, business, political, and intellectual elites of this country, particularly from the last two." *Id.*

354. 475 U.S. 503 (1986).

355. *Id.* at 507.

356. The *Air Force Times* reported: "Most families . . . like to live close to military community facilities, such as shopping and medical clinics, and feel more a part of the military community when they do." Rick Maze, *Opposition: Off-Base Bad for Families*, *AIR FORCE TIMES*, Oct. 11, 1993, at 4.

357. See generally David Wood, *Duty, Honor, Isolation: Military More and More a Force Unto Itself*, *STAR-LEDGER* (Newark, NJ), Apr. 21, 1991, at 1.

358. JANOWITZ, *supra* note 62, at xv.

359. In *Chappell v. Wallace*, 426 U.S. 296 (1983), the Supreme Court noted, "In the civilian life of a democracy many command few; in the military, however, this is reversed, for military necessity makes demands on its personnel without counterpart in civilian life." *Id.* at 300 (quoting *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975)).

ian society. As a result, their commitment to the democratic political system is extant but abstract.

Some in the military view the democratic process as imposing gratuitous inefficiency on the problem-solving mechanism. Others consider it hopelessly subverted by parochial concerns that imperil paramount national interests. Virtually all despise the compromises and duplicity inherent in modern politics. As often as not, they regard the political process as yet another obstacle to mission accomplishment. "[D]emocracy is not," as General Powell observed, "an easy form of government for military professionals."³⁶⁰

It is particularly relevant then that postmodern militarism arises in the context of growing military expertise—and interest—in political affairs. As the military becomes more aware of its political power, it demonstrates a greater willingness to use it to advance military interests. The military's natural inclination is to displace the deficiencies of the existing political processes with the self-contained authoritarian methodologies it knows, understands, and considers effective. As the military's responsibilities become increasingly open-ended, the potential exists for the military to assume it has the right, and even the *obligation*, to intervene in a wide range of activities when it perceives it can advance a broadly defined notion of the national interest.³⁶¹ Once the military arrogates to itself such discretion, civilian control is truly in jeopardy.

Finally, postmodern militarism seems to assume that a military integrated into domestic roles will be "civilianized" by the process and thereby rendered more amenable to civilian control. There are few models, however, for the "civilianization" of professional militaries. For example, the military's deep involvement in civil affairs during the occupation of Germany following World War II did not "Germanize" the United States military. British regulars serving in colonial posts during the nineteenth century did not assume the cultures of the countries to which they were assigned; to the contrary, they often significantly influenced the indigenous societies in the nations where they served. Hence, postmodern militarism's optimistic assumption that the military will be "civilianized" may be dangerously erroneous.

The profession of arms is an exclusive culture, and one that is much more separated from civilian society than postmodern militarism supposes. Soldiers "are trained to do socially obnoxious things, like shooting people and blowing up bridges. As a result they have a different view of life."³⁶² Military historian John Keegan explained:

Soldiers are not as other men—that is the lesson that I have learned from a life cast among warriors. The lesson has taught me to view with extreme suspicion all theories and representations of war that equate it

360. SECRETARY OF AIR FORCE, DEALING WITH DEMOCRACY 4 (1991) (policy letter).

361. This is one of the bases for military intervention identified by Finer. See Finer, *supra* note 24, at 30-33.

362. Paul Quinn-Judge, *Military Debate: Reflection of US or Breed Apart?*, BOSTON GLOBE, May 12, 1993, at 21 (quoting colonel who wished to remain anonymous).

with any other activity in human affairs . . . War is wholly unlike diplomacy or politics because it must be fought by men whose values and skills are not those of politicians or diplomats. They are those of a world apart, a very ancient world, which exists in parallel with the everyday world but does not belong to it. Both worlds change over time, and the warrior world adapts in step to the civilian. It follows it, however, at a distance. The distance can never be closed, for the culture of the warrior can never be that of civilization itself.³⁶³

In a very basic sense, postmodern militarism misapprehends the warrior ethic and the effect it has on military society. The frailties of the human condition necessitate armed forces, and the United States has shown the genius to create an enormously powerful military. Yet, just as the military can keep a nation free, it can, without effective civilian control, enslave a nation as well.

VIII. RECOMMENDATIONS

Despite the end of the Cold War, a catalogue of remaining threats, as well as the myriad of obligations as the world's sole superpower, compels the United States to maintain large military forces. Consequently, it is imperative that immediate steps be taken to revitalize civilian control of military forces. The following actions are recommended:

- We must develop a new model for civilian control of the military. Huntington preferred the notion of "objective" civilian control.³⁶⁴ Objective civilian control militarizes or "professionalizes" the military by consigning the armed forces exclusively to the apolitical task of the management of violence.³⁶⁵ Huntington contended that objective civilian control will render the armed forces "politically sterile and neutral," albeit as militarily powerful as security needs dictate.³⁶⁶

It is probably not possible—or even desirable—to render the military truly "politically sterile." Political issues and sensitivities are too intertwined with national security policy for the military to ignore. However, we can ensure that the military's focus remains on *external* threats. Preparing to fight two regional wars simultaneously is more than a sufficient occupation for a shrinking military. Minimizing the military's involvement in domestic affairs would reduce the potential for dangerous conflict with civilian authorities.

- We must combat the growing lack of military experience and expertise in the senior civilian leadership. To accomplish this objective, the nation's war colleges should increase representation from the civilian ranks of government. In addition, at least part of the curriculum should be opened to key members of the media, as well as leaders from social institutions and business. To broaden the outlook of future officers, and to acquaint more

363. JOHN KEEGAN, A HISTORY OF WARFARE at xvi (1993).

364. HUNTINGTON, *supra* note 6, at 83-85.

365. *Id.*

366. *Id.* at 84.

of the Meritocrats with members of the armed services, military academy cadets should spend a year at a top civilian institution.³⁶⁷ For the same reasons, mid-level officers should spend at least one year obtaining an advanced degree in a residence program at a leading university. Civilian universities should include more national security and military history courses in their curricula. Likewise, professional military education should place greater emphasis on the historical basis for, and contemporary challenges to, the concept of civilian control of the military.

- Key Pentagon posts must be filled in a timely manner. Finding qualified women and minorities for the posts is an obviously laudable goal, but it must not deprive the military of civilian leadership during crucial periods.³⁶⁸

- The judiciary must retain its deference to the elected branches of government. When appropriate, the adverse effect of judicial intervention on civilian control of the military should be highlighted for the courts.

- Congress and the executive branch must take a more collaborative and cooperative approach to controlling the military. National concerns must take precedence over parochial interests when dealing with military issues. Congress and the executive branch also must resolve the dilemma of the War Powers Resolution before it manifests itself in a ominous conundrum for a military commander.

- The media must lessen its dependence on the military for information, transportation, and communications support when reporting on armed conflict. Care must be taken to ensure that operational security is not compromised, but the media must be prepared to function independent from a military logistics base.

- Most important, Americans must not allow a desire for economic and personal security to cause them to abandon their faith in traditional democracy. Americans seem to expect that democracy will automatically lead to growth despite evidence that indicates it is not necessarily related to economic development.³⁶⁹ Americans should remember that even in a relatively depressed economy they still enjoy one of the highest standards of living in the world. Though they castigate elected government for their personal financial troubles, it is nevertheless true that business downturns are an inevitable part of the economic cycle.³⁷⁰

- Clearly, however, it is in the area of physical security that, according to Charles Townsend, "liberal states remain vulnerable to the blurring of civil and military functions."³⁷¹ The spiraling crime rate in America has generated calls for dramatic measures including patrols by soldiers.³⁷²

367. Janowitz suggested such an approach. JANOWITZ, *supra* note 62, at lii.

368. *The Pentagon's Missing Civilians*, *supra* note 249, at C6. According to the *Washington Post*, one reason offered by Clinton Administration supporters for the delay in filling Pentagon jobs was the desire to "bring women and minorities into top posts." *Id.*

369. See generally Karen Pennar et. al., *Is Democracy Bad for Growth?*, *Bus. Wk.*, June 7, 1993, at 84.

370. Samuelson, *supra* note 100.

371. See Townsend, *supra* note 351, at 83.

372. For a discussion of calls for soldiers in American cities, see *supra* note 131 and

Americans fail to realize that crime is a tragic byproduct of the prosperity and expansion of personal rights enjoyed since the end of World War II. Professor James Q. Wilson of UCLA believed that the crime rate will rise "regardless of what government does." He explained:

The most significant thing in the last half-century has been the dramatic expansion in personal freedom and personal mobility, individual rights, the reorienting of culture around individuals. We obviously value that. But like all human gains, it has been purchased at a price. Most people faced with greater freedom from family, law, village, clan, have used it for good purposes—artistic expression, economic entrepreneurship, self-expression—but a small fraction of people have used it for bad purposes. So just as we have had an artistic and economic explosion, we have had a crime explosion. I think the two are indissolubly entwined.³⁷³

Consequently, we must reject the inclination to resort indiscriminately to the military to stop crime.

CONCLUSION

Postmodern militarism entices Americans to task the military with the quixotic mission of providing perfect security. By doing so they unwittingly invite a stifling of the expansive freedom and spontaneous individualism that produces the very society they seek. In the final analysis, it is the American people who must make some hard decisions about the kind of nation in which they wish to live. If they continue to turn to the military for answers, if they abandon their attachment to the democratic process, if they fail to take the necessary action to reinvigorate civilian control, if they persist in exalting inflated notions of security over all other human values, then they will get, as it is often said, the government they deserve. If that becomes the case, then we must sadly say, "Welcome to the junta!"

accompanying text.

373. *A Rhythm to the Madness*, TIME, Aug. 23, 1993, at 31.